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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 42

M. CLAUDE SCREWS, FRANK EDWARD JONES
AND JIM BOB KELLY, PETITIONERS,

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1944.

CERTIORARI GRANTED APRIL 24, 1944.



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UNITED STATES OF AMERICA.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA—
ALBANY DIVISION.

No. 1300, Criminal.

M. CLAUD SCREWS; FRANK EDWARD JONES; JIM
BOB KELLEY,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appearances:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally
Building, Atlanta, Georgia, and Mr. Robert B.
Short, Newton, Georgia, Attorneys for Appellants.

Mr. T. Hoyt Davis, United States Attorney, Macon,
Georgia, and Mr. G. Maynard Smith, Special Assist-
ant to the Attorney General of the United States,
Washington, D. C., Attorneys for Appellee.

APPEAL from the District Court of the United States for
the Middle District of Georgia, Albany Division, to
the United States Circuit Court of Appeals for the
Fifth Circuit, returnable at the City of New Orleans,
Louisiana.

United States District Court.

October Term, 1942.

United States of America,
Macon Division,
Middle District of Georgia.

The Grand Jurors of the United States, selected, chosen and sworn in and for the Middle District of Georgia, upon their oaths present:

Count One.

1. That on January 29, 1943, and at all times mentioned herein, M. Claud Screws was the duly elected Sheriff of Baker County, Georgia, and was acting in that capacity under and pursuant to the laws of the State of Georgia creating the office of sheriff and prescribing the duties thereof.

2. That on January 29, 1943, and at all times mentioned herein, Frank Edward Jones was employed by the City of Newton, Georgia, as a policeman and night patrolman, and was acting in that capacity under and pursuant to the laws of the State of Georgia and the ordinances and regulations of the municipality of Newton, Georgia, creating the office of police officer and prescribing the duties of said office.

3. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as the "defendants", did unlawfully, willfully and feloniously conspire, combine,

confederate and agree together and with each other to injure and oppress Robert Hall, a Negro citizen of the United States and an inhabitant of the State of Georgia, in the free exercise and enjoyment of rights, privileges and immunities secured to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried, upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia;

That it was the plan and purpose of said conspiracy that the said defendants would, and they did, on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, arrest and cause to be arrested the said Robert Hall and that they would, and they did, bring and cause to be brought the said Robert Hall to the well in front of the Courthouse in said Newton, Georgia, and that then and there the defendants would, and they did, unlawfully and wrongfully assault, strike, and beat the said Robert Hall about the head with human fists and a blackjack causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (18 U. S. C. 51.)

Count Two.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. That on January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, who was then and there the duly elected sheriff of Baker County, Georgia, acting under the laws of the State of Georgia, creating the office of sheriff and prescribing the duties thereof, and Frank Edward Jones, who was then and there a police officer employed by the municipality of Newton, Georgia, acting under the laws of the State of Georgia and the ordinances and regulations of the municipality of Newton, creating the office of police officer and prescribing the duties of such office, did willfully, unlawfully, and wrongfully, under color of the laws, statutes, ordinances, regulations and customs of the State of Georgia and of the County of Baker in said State and of the municipality of Newton in said County and State, creating the offices of Sheriff of Baker County, State of Georgia, and police officer of the municipality of Newton, Baker County, State of Georgia, subject and cause to be subjected Robert Hall, a Negro citizen and inhabitant of the State of Georgia and of the United States, to the deprivation of rights, privileges and immunities secured and protected to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and bat-

tery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties, by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried, upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia; that is to say, that on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants arrested and caused to be arrested the said Robert Hall, and brought and caused to be brought the said Robert Hall to the well in front of the Courthouse at Newton, Georgia, and then and there unlawfully and wrongfully did assault, strike and beat the said Robert Hall about the head with human fists and a blackjack causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that at the time and place aforesaid, Jim Bob Kelley, well knowing all the premises aforesaid did, in the Albany Division of the Middle District of Georgia and within the jurisdiction of this Court, unlawfully, knowingly and willfully did and abet in the commission by Sheriff M. Claud Screws and Night Patrolman Frank Edward Jones of the offense described in this count.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. -(18 U. S. C. 52; 18 U. S. C. 550.)

Count Three:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. That all of the allegations contained in paragraphs 1 and 2 of Count One of this indictment are here incorporated by reference as though fully set out;

2. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as the "defendants", did unlawfully, wilfully and feloniously combine, conspire, confederate and agree together and with each other to commit an offense against the United States of America, to-wit, to violate Title 18, Section 52, United States Code, that is to say, during the period set forth above, the said defendants did combine, conspire, confederate and agree together and with each other, that they would, under color of the laws, statutes, ordinances, regulations and customs of the State of Georgia and of the County of Baker in said State and of the municipality of Newton in said County and State, creating the offices of sheriff of Baker County, State of Georgia, and police officer of the municipality of Newton, Baker County, State of Georgia, willfully subject and cause to be subjected Robert Hall, a Negro citizen and inhabitant of the State of Georgia and of the United States, to the deprivation of rights, privileges

and immunities secured and protected to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia;

That it was the plan and purpose of said conspiracy that the said defendants would, and they did, on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, arrest and cause to be arrested the said Robert Hall, and that they would, and they did, bring and cause to be brought the said Robert Hall to the well in front of the Courthouse in said Newton, Georgia, and that then and there the defendants would, and they did, unlawfully and wrongfully assault, strike and beat the said Robert Hall about the head with human fists and a blackjack, causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That the defendants, to effect the objects of the conspiracy and in furtherance thereof, did at the several times hereinafter mentioned, knowingly, willfully and feloniously commit certain overt acts including the following:

Overt Acts.

1. That on the evening of January 29, 1943, the defendants Frank Edward Jones and Jim Bob Kelley, at the request of the defendant M. Claud Screws, drove to the home of the said Robert Hall near Newton, Georgia, in an automobile belonging to the defendant M. Claud Screws.

2. That on the evening of January 29, 1943, the defendants Frank Edward Jones and Jim Bob Kelley arrested the said Robert Hall at his home near Newton, Georgia, handcuffed the said Robert Hall and placed him so handcuffed in the rear seat of the automobile belonging to the defendant Mr. Claud Screws.

3. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants Frank Edward Jones and Jim Bob Kelley drove the said Robert Hall, so handcuffed, from his home near Newton, Georgia, to the well in front of the Court-house in Newton, Georgia, in the automobile belonging to the defendant M. Claud Screws.

4. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, at and near the well in front of the Court-house in Newton, Georgia, unlawfully and wrongfully did assault, beat and strike the said Robert Hall about the

head with human fists and a blackjack, felling the said Robert Hall to the ground while still handcuffed, and continued to beat, strike and assault the said Robert Hall as aforesaid after he had been felled to the ground.

5. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants Frank Edward Jones and Jim Bob Kelley dragged the unconscious body of the said Robert Hall from the well in front of the Courthouse at Newton, Georgia, up the concrete walkway, through the Courthouse into the jail in back of said Courthouse at Newton, Georgia, and left the said Robert Hall lying unconscious on the floor of said Jail.

6. That in the early hours of the morning of January 30, 1943, the defendant Frank Edward Jones entered the jail at Newton, Georgia, and removed from the unconscious body of the said Robert Hall the handcuffs with which he had been fettered from the time he was placed in the car belonging to the defendant M. Claud Screws as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (18 U. S. C. 88.)

ROY I. NEAL,

Foreman of the Grand Jury.

JOHN P. COWART,

Assistant United States Attorney.

United States District Court, Middle District of Georgia,
Macon Division.

The United States of America

vs.

No. 1300.

M. Claud Screws; Frank Edward Jones; Jim Bob Kelley.

Indictment.

Violation: 18 U. S. C. A., 51 and 52.

A true bill:

ROY I. NEAL, Foreman.

Filed in open Court this 10 day of April, A.D. 1943.

GEO. F. WHITE, Clerk.

Bail, \$7500.00 each.

PLEA.

The defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley waives arraignment and pleads not guilty this 4 day of Oct., 1943.

CLINT W. HAGER,

FRANK KEMP &

ROBT. B. SHORT,

Attys. for Defts.

VERDICT.

We, the jury, find the defendants, Guilty on Counts 2 & 3, this Oct. 7, 1943.

J. B. JENKINS, Foreman.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

M. Claud Screws.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, M. Claud Screws appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—Wilfully, unlawfully and wrongfully, under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker, subjected one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States; unlawfully conspired with others to subject said Robert Hall to the deprivation of said rights, privileges and immunities—and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court. It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively—or until said defendant is otherwise discharged as provided by law.

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEEVER,

United States District Judge.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

Frank Edward Jones.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, Frank Edward Jones appearing in proper person; and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—Wilfully, unlawfully and wrongfully, under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker, and municipality of Newton, subjected one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States; unlawfully conspired with others to subject said Robert Hall to the deprivation of said rights, privileges and immunities—and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively—or until said defendant is otherwise discharged as provided by law:

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943:

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United

States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEEVER,
United States District Judge.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

Jim Bob Kelley.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, Jim Bob Kelley appearing in proper person, and by counsel, and:

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—unlawfully, knowingly and wilfully aided and abetted others in subjecting one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States while acting under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker and municipality of Newton; unlawfully conspired with others to subject said Robert Hall to the de-

privation of said privileges and immunities--and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively--or until said defendant is otherwise discharged as provided by law.

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEAVER,

United States District Judge.

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DEMURRER

(Title Omitted.)

Now come the defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, and before issue is joined

in the above stated case and before being put in jeopardy, and demur jointly and severally to the indictment in this cause and move to quash same, upon the following grounds, to-wit:

1.

Because the matters and things set forth and charged in the several counts, 1 to 3 inclusive, do not constitute offenses against the laws of the United States and do not come within the purview, true intent, and meaning of any statute or of any law of the United States.

2.

Because the matters and things in said indictment, set forth and charged, do not constitute offenses cognizable in the United States District Court and do not come within the jurisdiction of said Court or of any Court of the United States.

3.

Because this Court has no jurisdiction over the alleged crimes charged in said indictment.

4.

Because no crime against the laws of the United States nor any offense against the United States nor any offense against the laws of the United States is charged in said indictment against these defendants or either of them.

5.

Because the indictment does not show facts sufficient to being the same within the provisions of any statute or of

any law of the United States nor within the provisions of any offense against the United States.

6.

Because the indictment as a whole alleges no facts nor acts which would constitute a violation of the statutes of the United States nor any offense against the laws thereof.

7.

Because said indictment and each count thereof are too vague, general, insufficient and uncertain to afford the accused proper notice to plead and prepare their defenses and are too vague, general, insufficient and uncertain to set forth any specific offense or offenses under the laws of the United States.

Count 1.

1.

Because the matters and things set forth and charged in count 1 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 51).

2.

Because the matters and things set forth and charged in count 1 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

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3.

Because the matters and things set forth and charged in count 1 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court not of any other Court in the United States.

4.

Because said count of said indictment does not show nor specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the Constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said state.

6.

Because said count in said indictment does not show facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

7.

Because said count 1 does not set forth specifically and with particularity what rights, what privileges or what immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and laws of the United States and which it is claimed have been violated by the defendants.

8.

Because the gist of the alleged conspiracy is not charged with precision and certainty and the ingredients of said alleged conspiracy are not clearly stated nor charged.

9.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Count 2.

1.

Because the matters and things set forth and charged in count 2 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 52).

2.

Because the matters and things set forth and charged in count 2 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

3.

Because the matters and things set forth and charged in count 2 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court nor of any other Court in the United States.

4.

Because said count of said indictment does not show nor specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the Constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said State.

6.

Because said count of said indictment does not show facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

7.

Because said count 2 does not set forth specifically and with particularity what rights, what privileges or what

immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and laws of the United States and which it is claimed have been violated by the defendants.

8.

Because it is not alleged specifically and with particularity in said count 2/ under what law, under what statute, under what ordinance or under what regulations the defendants are claimed to have acted in committing the alleged offense.

9.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Count 3.

1.

Because the matters and things set forth and charged in count 3 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 52).

2.

Because the matters and things set forth and charged in count 3 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

3.

Because the matters and things set forth and charged in count 3 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court nor of any other Court in the United States.

4.

Because said count of said indictment does not specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said State.

6.

Because no crime against the laws of the United States nor any offense against the United States nor any offense against the laws of the United States is charged in said count of said indictment against these defendants or either of them.

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7.

Because said count in said indictment does not allege facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

8.

Because said count 3 does not set forth specifically and with particularity what rights, what privileges or what immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and by the laws of the United States and which it is claimed have been violated by the defendants.

9.

Because the gist of the alleged conspiracy is not charged with precision and certainty and the ingredients of said alleged conspiracy are not clearly stated nor charged.

10.

Because said count of said indictment does not show facts sufficient to bring the same within the provision of any statute of the United States nor within the provision of any offense against the United States.

11.

Because said count of said indictment in alleging a conspiracy to violate Sec. 52 of Title 19, U. S. C. A. does not allege nor specify any violation of the Constitution or of the laws of the United States and does not state any offense against such laws.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Wherefore, defendants pray that this their demurrers be sustained and that said indictment and each count thereof be quashed.

CLINT W. HAGER,

J. F. KEMP,

R. B. SHORT,

Attorneys for Defendants.

Filed at 4:00 P. M. July 12, 1943.

**ORDER SUSTAINING DEMURRER TO COUNT I AND
OVERRULING IT AS TO COUNTS II AND III.**

The motion to dismiss the indictment was argued by counsel for both sides orally and by brief. The motion is hereby sustained as to Count 1 and said Count is hereby dismissed and quashed. The motion is overruled as to Counts 2 and 3.

This August 30, 1943.

BASCOM S. DEEVER,

Judge.

Filed at 2:30 P. M. Aug. 30, 1943.

NOTICE OF APPEAL AND GROUNDS OF APPEAL.

In the District Court of the United States for the Middle
District of Georgia, Albany Division.

United States of America,

vs.

Crim. No. 1300.

M. Claud Screws, Frank Edward Jones and Jim Bob Kelley.

Name and Address of Appellants:

M. Claud Screws, Frank Edward Jones and Jim Bob
Kelley, all of Newton, Georgia.

Names and Addresses of Appellants' Attorneys:

Robert B. Short, Newton, Georgia, J. F. Kemp and Clint
W. Hager, 505 Connally Building, Atlanta, Georgia.

Offense:

Appellants were indicted at the October Term, 1942, by
a United States Grand Jury at Macon, Georgia, and
charged in the first count of violating Title 18, Section
51 U. S. C. A. which is for an alleged violation of the so-
called Civil Liberties Act. The second count was brought
under the provisions of Title 18, Section 52 which is for an
alleged violation of the so-called Civil Liberties Act. The
third count of the indictment was for a conspiracy to
violate the so-called Civil Liberties Act. Upon demurrer
the Court struck count 1 and defendants went to trial
upon counts 2 and 3.

Date of Judgment:

Appellants went to trial on October 4, 1943, and a ver-
dict was returned on October 7, 1943, finding appellants
guilty on counts 2 and 3 of the indictment and thereupon
and on said date of October 7, 1943, the Court pronounced
judgment.

Brief Description of Judgment or Sentence:

The Court imposed sentence of a year upon each of the appellants on count 2 of the indictment and a fine of \$1000.00 as to each of said defendants; upon the third count of said indictment the Court imposed a sentence of two years upon each of said defendants to run consecutively with the sentence imposed upon count 2.

Name of Prison where now Confined, if not on Bail:

Counsel for appellants notified the Court orally that an appeal would be taken within the time prescribed by law from the judgment and sentences imposed and requested that the Court permit appellants to be enlarged upon bail pending appeal. The Court refused to permit appellants or either of them to be enlarged upon bail and instructed the United States Marshal to convey them to the county jail of Mitchell County at Camilla, Georgia, where they are now confined.

We, the above named appellants hereby appeal to the United States Circuit Court of Appeals for the Fifth Judicial Circuit from the judgments above mentioned on the grounds set forth below and hereinafter:

**M. CLAUD SCREWS,
FRANK EDWARD JONES,
JIM BOB KELLEY,**
Appellants.

Dated October 8, 1943.

Grounds of Appeal.

The grounds of appeal upon which appellants rely for a reversal of the judgment entered against them as set out in the notice of appeal are as follows:

1.

That the Court erred in refusing to sustain the demurrers filed by appellants to counts 2 and 3 of the indictment upon each every ground set forth in said demurrer.

2.

That the Court erred in overruling appellants demurrer to counts 2 and 3 of said indictment.

3.

That the Court erred in overruling the motion made by appellants for a directed verdict upon both counts of said indictment at the conclusion of all the evidence introduced by the Government and at the time it rested its case.

4.

That the Court erred in overruling the motion made by appellants for a directed verdict at the conclusion of all the evidence introduced by both the Government and appellants.

5.

That the Court erred in refusing to direct a verdict on behalf of appellants at the conclusion of all the evidence upon the ground that there was a fatal variance between the allegations of the indictment and the proof introduced in the case.

6.

That the Court erred upon its ruling in the admission and exclusion of evidence as will more fully appear in

the assignment of errors which will be prepared when attorneys for appellants can secure a transcript of the written record.

I, Clint W. Hager, certify that I am attorney of record for appellants and that I have this day served Hon. T. Hoyt Davis, United States Attorney for the Middle District of Georgia with a copy of the foregoing notice of appeal and grounds therefor by mailing a copy of the same to him to his official office and place of business in the United States Post Office Building at Macon, Georgia.

This the 8th day of October, 1943.

CLINT W. HAGER,

Attorney of Record for Appellants.

Filed October 9 1943.

30

BOND.

Know All Men By These Presents, that we, M. C. Screws as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars to be paid to the said Obligee to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord One Thousand Nine Hundred and Forty Three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany

Division in a suit depending in said Court, between United States of America and M. C. Screws a judgment was rendered against the said M. C. Screws and the said M. C. Screws having given notice of appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the Above Obligation is such, that if the said M. C. Screws shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

M. C. SCREWS, (Seal)
R. L. HALL. (Seal)

Sealed, and delivered in presence of—

JOHN M. MAPLES,
ROBERT CULPEPPER, JR.,
U. S. Commissioner.

(U. S. Commissioner's Impression Seal Attached.)

Approved by—

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of
Oct., 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clk., U. S. Dist. Court.

(On Back of Bond.)

No. 1300—United States of America, vs.: Bond M. Claud
Screws, Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clerk, U. S. District
Court.

32

BOND.

Know All Men By These Presents, that we, Frank Edward Jones, as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars to be paid to the said Obligee to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord one thousand nine hundred and forty three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany Division in a suit depending in said Court, between United States of America and Frank Edward Jones a judgment was rendered against the said Frank Edward Jones and the said Frank Edward Jones having given notice of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served

upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the above Obligation is such, that if the said Frank Edward Jones shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK EDWARD JONES, (Seal)
R. L. HALL. (Seal)

Sealed and delivered in presence of—

JOHN M. MAPLES,

ROBERT CULPEPPER, JR.,

U. S. Commissioner.

(Comrs. Imprsn. Seal Attached.)

Approved by—

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond, being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of Oct., 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clk. U. S. Dist. Court.

(On Back of Bond.)

No. 1300. United States of America, vs. Bond, Frank Edward Jones—Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clerk, U. S. District Court.

34

BOND.

Know All Men By These Presents, that we, Jim Bob Kelley, as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Obligee, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord one thousand nine hundred and forty Three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany Division in a suit depending in said Court, between United States of America and Jim Bob Kelley a judgment was rendered against the said Jim Bob Kelley and the said Jim Bob Kelley having given notice of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the above Obligation is such, that if the said Jim Bob Kelley shall prosecute his appeal to

effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JIM BOB KELLEY, (Seal)

R. L. HALL. (Seal)

Sealed and delivered in presence of—

JOHN M. MAPLES,

ROBERT CULPEPPER, JR.,

U. S. Commissioner.

(U. S. Commissioner's Impression Seal attached.)

Approved by:

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond, being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of Oct., 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clk U. S. Dist. Court.

(On Back of Bond.)

No. 1300. United States of America, vs. Bond, Jim Bob Kelley. Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clerk U. S. District Court.

BILL OF EXCEPTIONS.

(Title Omitted.)

Be It Remembered, that on the 13th day of August, 1943, at the April Term, 1943, of said Court, before Honorable Bascom S. Deaver, United States Judge, the demurrers of the defendants to the indictment came on for hearing.

At said time and place and before said Judge, the following proceedings were had as hereinafter set forth:

Hearing before Honorable Bascom S. Deaver, United States Judge, without a jury, on August 13, 1943.

Appearances.

For the Prosecution:

Honorable T. Hoyt Davis, United States Attorney, and Honorable G. Maynard Smith, Special Assistant to the Attorney General of the United States.

For the Defendants:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally Building, Atlanta, Georgia,
Mr. Robert B. Short, Newton, Georgia.

DEFENDANTS' DEMURRERS TO INDICTMENT.

After hearing argument of counsel and citation of authorities, the Court took said matter under consideration and on the 30th day of August, 1943, the Court sustained defendants' demurrers to count 1 of the indictment and dismissed said count, and at the same time the Court entered an order overruling defendants' demurrers to Counts II and III of the indictment and refused to quash said

counts II and III of said indictment. The defendants through their attorneys reserved an exception to said ruling which exception was duly noted and allowed by the Court.

Be It Further Remembered, that on the 4th day of October, 1943, at the October Term, 1943, of said Court, before Honorable Bascom S. Deaver, United States Judge, and a jury, the above stated case came on for trial. Defendants M. Claud Screws, Frank Edward Jones and Jim Bob Kelley were present and were on trial at said time and place, and before said Judge the following proceedings were had as hereinafter set forth:

Trial before Honorable Bascom S. Deaver, United States Judge, and a jury, on October 4, 1943.

Appearances.

For the Prosecution:

Honorable T. Hoyt Davis, United States Attorney, and Honorable G. Maynard Smith, Special Assistant to the Attorney General of the United States.

For the Defendants:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally Building, Atlanta, Georgia,
Mr. Robert B. Short, Newton, Georgia.

At said trial the following witnesses were sworn and testified as hereinafter set forth:

39 WILL HALL (Col.), first witness sworn in behalf of the Government, testified on

Direct Examination.

My name is Will Hall. I am the father of Robert Hall, who was also called Bobby. I live out there about a mile

and a half below Newton, just a mile and a half below Newton, in Baker County. I was born and raised in that county. I have been living there just about six years. I have been living in Baker County all my life. I farm. I own my farm.

My son Bobby Hall or Robert was about 30 or 31 years old. I know Mr. M. Claud Screws and I know what office he holds in Baker County.

Stipulation.

Mr. Davis:

If Your Honor please, I would like to state that counsel agree and stipulate at this time that the defendant, M. Claud Screws, was at the time in question here and since and some years prior thereto, was and is the Sheriff of Baker County, Georgia; and that the defendant, Frank Edward Jones, was at the time in question here employed as a city policeman or night watchman by the Town of Newton.

(Direct Examination continued.)

I have been knowing Mr. Claud Screws ever since we were boys like.

Along in December I had occasion to go to see Sheriff Screws about a pistol. It was something like about the last day of December.

Q. Well, just relate to the jury why you went and what was the object of it and what the Sheriff said, if anything?

A. My boy come to me—

Q. Now, when you say "my boy", suppose you name him?

A. Yes, sir, Bobby Hall, he come to me in the house where I was one morning, where I was setting at the breakfast table, and was telling me that Mr. Frank Jones— And he said that "Mr. Frank Jones took my pistol last night, papa", said Mr. Claud told him to take my pistol" and he said "I wouldn't care if you axed him to give it back to me, please sir", said "I didn't carry it for no meanness at all but he said I be out mechanicing at night"—

My boy asked me to see the Sheriff and see if I could get the pistol back and I went to see Mr. Screws, and I ax'ed him would he mind giving him back the pistol, that he wouldn't do any harm with it and would he mind giving it back to me. He told me he would see me about it a day or two later and tell me. This was the next morning after the pistol had been taken from him. That was all that was said at that time between me and the Sheriff.

I went back to see the sheriff again about it, about three or four days later. On that occasion he told me to see the Judge and if the Judge would give me a trip back to him, he would give it to me. I did not go back to him any further. I let it alone, I did not get the pistol. I know what kind of pistol it was. It was an automatic blue steel with pearl handle.

So, after my two visits to the Sheriff in an effort to get the pistol, I abandoned the idea and let it alone. There was no case made against Bobby that I knows of for having the pistol. I didn't hear of any. He carried the pistol in that little drawer on the dash.

I recall the night that my boy was killed, the night of January 29, 1943. On that night I was home. I went off the first part of the night and didn't get back until late. I got back about eleven o'clock and I sot up there by the fire a few minutes and I went to bed and I heard

a car. I said I heard a car come up there to his house, to Bobby's house. Bobby lived about 100 yards from me. Bobby was married. I just see'd the lights of the car coming in through my glass windows. The car stopped up at his house. I stayed there just about ten minutes. It came back by my house, come back out and hit the road.

After the car left Bobby's wife, Annie Pearl, came to my house. The next morning Annie Pearl and I went to Newton to give bond for Bobby, just before sun-up. We went downtown there and went around to the jail. I didn't see nothing of the Sheriff there. I saw somebory in jail. I remember who I saw there. I saw Mr. Edgar Bailey and his wife and Mr. Hoke Edwards and his wife. My boy was not in jail. I found out where my boy was and we come to Albany.

Before leaving Newton there I went around the public square, about the well and around town. That was after I had talked to some people in Newton, after I had talked to the people in jail that I named—no, it was before I had talked to them, beforehand. I just see'd a puddle of blood there on the square and one of my boy's shoes. I saw some other scraps of clothing, see'd what looked like might have been a piece off of his undershirt. Looked like it was in two halves. The piece of undershirt was laying off in that direction from the blood and the shoe was just inside of the gate from the blood, one shoe. The pool of blood was a little bigger around than that table. I saw evidence on the ground and grass there where it had been disturbed. I could see a lot of tracks around there. I went up toward the Court-house, went up the walk. On the walk going toward the Court-house I seen a little stream of blood from there clean on through to the jail. That extended all the way from the well. The stream of blood started from that puddle of blood and went straight on to the jail and went through the Court-house. There were

no other indications of a struggle there no more than the blood and the tracks.

I was in Newton, I reckon, about three-quarters of an hour and then I went back home. I was advised in Newton what had happened to my boy. I was told that the boy was in Albany in the hospital. I talked to Mr. George C. Durham a little and Mr. John and Mr. Joe White. I talked to Mr. George Durham because I wanted to know if he had sworn out a warrant for Bobby Hall. Mr. George Durham is a fellow that stayed there in Newton. I was trying to find out what had he committed and the reason he was arrested.

Bobby's wife was with me all the while up there in Newton. When we left Newton, we went back home and she went back with me. Then I come to Albany. When I got to Albany I went to the undertaker, Walter Rotcat. I found my boy there. He was dead. It was about nine o'clock in the morning when I got there. The undertaker had not embalmed him when I got there. He had not washed him. He looked like he was bloodied up pretty bad in the head and on his body. His body from the pants up looked like he was raw-like. I stayed there until about 12:00 or 1:00 o'clock. Bobby had on his pants. I don't know whether he had them on or whether they were just laying over him. Bobby's wife was along all the while.

Mr. George Durham, I think, farms around there and Mr. John C. runs a store, runs a market.

Cross Examination.

I lived down in Miller County about ten years. I was born and raised in Baker County. I did move to Miller County.

I had a conversation with both Mr. George Durham and Mr. John C. Durham, the man that runs the market there, that same morning.

Re-Direct Examination.

I talked to Mr. George C. first. I met Mr. John C. last and I talked to him because I thought maybe Bobby's wife might have made a mistake in the Durhams.

43 MR. E. M. ELLIS, JR., 2nd witness sworn in
behalf of Government, testified on

Direct Examination.

My name is E. M. Ellis, Jr. I live in Newton. I do not do anything. I am disabled. I have lived right in Newton about four years.

I was a member of the Baker County grand-jury in January of this year, of Baker Superior Court. I know Bobby Hall or Robert Hall. He appeared before the grand-jury there. His complaint was that he had lost a pistol and he came before the grand-jury to see if they could do anything about it or get it for him. He said Frank Jones had taken the pistol from him. He was undertaking to enlist the aid of the grand-jury in recovering his pistol. I think the grand-jury was advised as to who had the pistol. Bobby Hall advised them as to who had it. He said that he understood that Frank, I mean that Mr. Claud Screws had it. The grand-jury listened to him but there was no relief we could give him. The sheriff came before the grand-jury on the same matter after the grand-jury called him. The Sheriff said that he was going to keep the pistol until the Judge ordered him to turn it over and if there were any more that had any, he was going to take them. I do not know just the exact words the sheriff used but he said if the grand-jury thought they could do anything about it to stop him, to go ahead and do it. The Sheriff cursed, he said if any of these damn negroes think

they can carry pistols, I am going to take them, that they don't carry them to shoot birds with, or something like that. I do not remember anything else that he said. That was about the substance of what he stated to the grand-jury that I served on.

(No cross examination.)

44

MR. MASTON O'NEAL, 3rd witness sworn in
behalf of Government, testified on

Direct Examination.

My name is Maston O'Neal. I am Solicitor-General of the Albany Circuit. Baker County is in that circuit.

I attended a session of the grand-jury in Baker County in January of this year. I did not know him but Bobby Hall came before the grand-jury. I never had seen him before. He did appear before the grand-jury. I did not send for him.

As I came back into the grand-jury after the noon hour one day he was already in the room. He asked the grand-jury to require the sheriff to return his pistol. He said that it had been taken away from him by some officer. I am not sure just who he said. My recollection is he said Eddie Frank Jones. And he said that the pistol had been turned over to Sheriff Screws and that Sheriff Screws at that time had it, and he wanted the grand-jury to return it. I mean to require the sheriff to return it. Of course, the negro was questioned further about it while he was still in the room and it appeared from what he said that the pistol had been in a truck, as I recall it in a pocket or glove compartment or somewhere. And so when the negro left the room I was asked whether or not he had committed a crime and I told them that as I recalled the Georgia law

that the Supreme Court had held that unless the pistol was in his manual possession, that is with respect to his hand or available about his person, that he would not commit the offense of carrying a pistol without license or carrying it concealed; that the Court had held, for example, where the pistol was in some part of a buggy or wagon or automobile that it did not constitute carrying a pistol without a license or carrying it concealed.

If there ever were any charges filed against this negro, Bobby Hall, by the Sheriff or Frank Jones, I was not aware of it.

There has been no complaint filed with me in connection with the death of Bobby Hall against Sheriff Screws, Jones and Kelley. As to whom I depend for investigation of matters that come into my Court, I am an attorney, I am not a detective and I depend on evidence that is available after I come to Court or get into the case, get into a case that is made. The sheriffs and other peace officers of the community generally get the evidence and I act as the attorney for the state. I rely on my sheriffs and policemen and peace officers and private citizens also who prosecute each other to investigate the charges that are lodged in Court. Of course, I do some too after the case is made, if I can.

The grand-jury in Baker County I referred to convened on the third Monday in January and, if my recollection is correct, it was about Wednesday, which was the last day of the session so far as the grand-jury was concerned, when Bobby Hall appeared before them. I can refer to a calendar and tell you the date, the day of the month. After referring to a calendar, if I were going to guess, I would say the 20th of January.

(No cross examination.)

46. MR. ROBT. L. CULPEPPER, 4th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Robert Culpepper. I am an attorney at law and United States Commissioner also at Camilla, which is my home. I was born and raised there. I practice in that county, Mitchell County, and others.

I knew Robert Hall or Bobby Hall casually. I have seen him once or twice or maybe three times. He called on me along in January. I think he came to my office a little earlier, maybe in December or it might have been the early part of January. He said that either the sheriff or the night watchman over there had his pistol and he wanted me to help him get it. He said something about he thought he could get it if Judge Crowe would give him an order. The first time he came, I do not recall the date but it was several weeks before he came the last time. I believe he asked me if I would see Judge Crowe about the matter, and I either forgot it or for some reason didn't see Judge Crowe. I had forgotten about it when he came the second time, and I go to Newton frequently and I sat down while he was there and dictated a letter to Sheriff Screws about the matter. I have a duplicate copy of that letter that my stenographer made at the time. This letter is dated January 28th. I think it was in the afternoon I wrote it but I do not know. It is ten miles from Camilla over to Newton. I do not know what the mail schedule is over there. I think they have a Star Route that goes over there every afternoon and perhaps comes to Camilla and goes back in the morning. I am pretty sure that is correct. I suppose I mailed the letter the same day I wrote it or rather the lady in my office did. The date of the letter is January 28, 1943.

Q. All right, read it Mr. Culpepper?

A. (Witness reading letter dated January 28, 1943, addressed to Mr. Claud Screws, Newton, Georgia, identified and attached hereto as GOVERNMENT'S EXHIBIT No. 1.)

(Witness): That is dated the 28th. I do not know what day the 28th of January was on. I am inclined to think it was Thursday and I went over to Newton on Saturday afternoon, after lunch. I went in the Court-house at the front gate. I saw some blood on the steps of the Court-house. I passed right by the well. I usually park there somewhere. I did not see the sheriff. This was after the death of Bobby Hall as I heard in Newton at that time that he was dead.

Adjourned for Lunch—12:52 P. M. to 2:05 P. M. (October 4, 1943).

48 MRS. MAMIE WHITE, 5th witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Mrs. Mamie White. I live about two miles out of Newton. My husband and I have a business in Newton, filling station and drink stand. We do not sell any meals there now. We were running this filling station and drink stand on the 29th of January of this year and selling food at that time.

I knew a negro in that community named Bobby Hall and knew what he did. He was a mechanic over at Butler's service station in the garage there, across the street. Our place is on one side of the highway and his place is on the other side of the highway. I wouldn't

say as I do not know exactly how long he had been running that garage or repair shop.

I remember the night that Bobby Hall was killed, the 29th of January of this year. I was at our place of business that afternoon and evening or rather it was in the evening. I was not there in the afternoon. I saw Bobby Hall around there. He came over to fix the light on a car of my daughter-in-law's at our place. This was after dark, I would say about 7:30 or 8:00. I do not know exactly the time but it was after dark. He came from Mr. Butler's place over there. After he had closed his station he drove his car over there. He fixed the light on my daughter-in-law's car.

I know Sheriff Claud Screws, the defendant Jones here and the defendant Kelley. I saw Sheriff Screws the night of January 29th. I do not know exactly what time it was when the negro was working on the car. It was right after the negro quit working on the car. It was right after. I won't say exactly what time. I would judge about 7:30 or 8:00. I do not know whether this was just about the time that the time changed in Georgia or not. It was after dark is all I know but I wouldn't say what time it was.

I first saw Sheriff Screws parked across the street over by Mr. Butler's station right down underneath the station across from our place, parked in his car, sitting in his car. Bobby Hall at that time was working on the lights of the car, of my daughter-in-law's car at our filling station up underneath the shed under the light there. The sheriff was alone. I would say he stayed there 20 or 30 minutes. He sat there the time the negro was working on the car.

When Bobby Hall left our place of business, after he had fixed my daughter-in-law's car, he got in his car and drove off. I do not know which way he went. He drove off in a Chevrolet coupe, I think. It looked like a Chevro-

let. I did not notice the make of his car but it was a coupe. It was not a truck. It was a passenger car.

Sheriff Screws came over to our place of business right after the negro drove off. I started to get in the car and Mr. Screws drove from across the street right up by my place. He got out. He asked me where Joe Whitlock was, asked me if Joe Whitlock was in there. I didn't see Joe Whitlock. There was some one else in there. There were one or two in there. My husband was in there and Cal Hall, Jr. was in there. I heard no conversation that Sheriff Screws had with any one there only what he said to me. He asked me if Joe Whitlock was in there and I told him no, I hadn't seen him. Well, he was cursing and he said he needn't hide from him because somebody was going with him, that he was going to go and get the black SB and going to kill him, that he had lived too long then; that he was going and get him and kill him, but he didn't say whom and I did not know who he was speaking of.

This was the night the negro was killed the night Mr. Screws came to our place and prior to the time he was killed. I said he was using profanity. He said he needn't be hiding from him because some one was going with him. He asked me about Joe Whitlock and he said he needn't be hiding because some one was going with him after him that he had done lived too long, that he was going to kill him. He said he was going after the black son-of-a-gun or son-of-a-bitch is the words he said, but he didn't say who it was.

Q. (Repeated by reporter): "I will ask you, Mrs. White, to state what was the condition and the appearance of the Sheriff at that time, Sheriff Screws"?

A: Well, he seemed to be drinking. He had off his hat.

Well, he didn't look normal. His hair was down in his eyes and his shirt was all out of his trousers and he was

holding to his car door, standing there just holding to it, reeling and rocking like he was trying to get his balance while he was standing by his car. His shirt was all out of his trousers hanging around, wasn't even in his trousers. His trousers were just hanging on to him.

The sheriff had a pistol and a black jack. His face was red. I said he was holding to the car. I did not get close enough to him to smell whether he had the smell of whiskey on him.

I got in the car and went to the drugstore and picked up my daughter-in-law to go home and I left him standing there. He called Cal Hall, Jr. and I walked on to the car. The sheriff called Cal Hal, Jr. He was still using profane language. When I left there I left Sheriff Screws going toward the door where Cal Hall was. When I walked around the back of the car he was asking me those questions and I got in the car and drove off. I do not know whether he ever talked to Cal or not but he called him. Mr. Screws asked me this question. He was talking to me and cursing and when I drove off he called Cal Hall, Jr. I do not know whether he ever talked to him or not because I left.

I said I know Jim Bob Kelley. I have known him eight or ten years, I imagine. He did not come to our place of business that night at any time, not that night he didn't. He came the next morning. He was there early for breakfast the next morning. We usually open at eight o'clock and he came in for breakfast when we opened.

I had some conversation with him. We were discussing the negro getting killed. At the time Jim Bob Kelley came in there I had been over to the Court-house square. I had been over to the market. I saw some blood around the well. I do not know exactly the measurements of the size of the pool of blood. It was a large size place of blood. It was about as large or probably a little smaller than the table the reporter is using. I saw some pieces

of clothing. I don't know whether it was clothes or handkerchiefs or what it was. I went over there about eight o'clock to get ham for breakfast, over to the market. The market is across the street from the well.

I did not observe any evidences on the ground or grass there that indicated anything to me. I did not look on the grass. It was sandy around the well. I didn't go inside of the Court-house square at all. It was after that that Jim Bob Kelley came to our place of business.

We were talking saying something about the killing and Jim Bob Kelley said that I might be talking too much, said I had better not be saying too much, I might be talking too much; and he was drunk and I didn't say very much more to him. He ordered his breakfast but he didn't eat it. He sat up and went to sleep in his place.

Q. Why do you say he was drunk?

A. I saw him drink in my place.

Q. Did he do anything else to indicate he was drunk?

A. Not anything except spill his coffee.

I did not observe any blood on Mr. Kelley. I did not question him about it any way. He made no remark about anybody being dead. We talked about the negro being dead because the negro came in and asked my husband to call and see if the negro was at the hospital and he told them that the negro was dead and that is how I knew that the negro was dead. I do not mean Jim Bob Kelley said that but ever who he called at the hospital and my husband spoke to said Bobby was dead. That's how we knew he was dead and Mr. Kelley was in there at the time. Kelley did not say anything about it except he said that it was just another negro dead. He said that to me. As to the occasion for his saying that, I said, I was just talking like everybody else does and I said it was a shame for anybody to get drunk and kill a negro and he said I had better hush, might be talking too much. He

said it is just another dead negro. That was the conversation that we had.

I stated that I know Mr. Frank Edward Jones, the policeman there. I have known him all of his life. Frank Jones came into our place of business that night of the 30th about eight o'clock, the night following the killing. I was sitting at the stove and he said I looked like I was mad and I told him that I was sick, and he asked me what made me sick and I said seeing all of that blood all day. He said "You let a little thing like that make you sick?" And I said "Yes, wouldn't it you?" And he said "No, I helped make him spill it and it didn't make me sick."

Cross Examination.

I have known Sheriff Screws all my life. I am not very friendly toward Mr. Screws. However, I do not hate him. I recall the time that the sheriff was in the hospital here in Albany and they thought his eyes were out. I did not make the statement to Mrs. Clyde Edwards that I didn't care about seeing him blind but I would like to go to the son-of-a-bitch's funeral. I did not make that statement. I did not make that statement to or in the presence of Mrs. Clyde Edwards. I did not make any statement of that nature in her presence. I said I never made that statement in the presence of anybody, not that I would like to go to his funeral I did not. I didn't say that. I did not make any statement about I would like to see the son-of-a-bitch a corpse. I did not say anything about wishing he was dead or either wishing he was blind or about his being a corpse. I did not call him a son-of-a-bitch.

I never made a statement to Mr. Rob Wolf that I had prayed to the Lord to get Him to forgive me, and be

friendly toward Sheriff Screws but that every time I saw the son-of-a-bitch I got mad again. I did not make that statement.

55

MR. CAL HALL, JR., 6th witness sworn in behalf of Government, testified on

Direct Examination.

My name is Cal Hall, Jr. I live at Newton or out from Newton in Baker County.

I remember the night that Bobby Hall was killed, January 29th of this year. I was at Mr. Joe White's filling station early that night. I do not recall who all was in the station. I went in to see Mr. White about a tire. I couldn't say whether Mrs. White was there or not. There were several in there. I saw Sheriff Screws on that occasion. He came in the station while I was there. He had some conversation with me. He walked in and asked me did I have any guts and I told him yes, a little bit and he said well I am going to get Bobby Hall and I told him no I couldn't afford to go because I worked negroes and I didn't go with arresting officers. He told me he was going to get Bobby Hall. I imagine that was about 9:30.

I stayed there about 20 minutes. The sheriff had walked outside and he was outside when I left. He was not using any profanity during the time that he was around there. I did not hear any profanity.

I saw the sheriff later that evening when he came in Mr. Johnny West's about 30 or 40 minutes after he had left the filling station. At that time he and Mr. Kelley and Mr. Jones were together. I refer to Frank Jones, the defendant here and Jim Bob Kelley. Johnny West's place is a bar-room. When the three came into West's bar-room, Jones he danced but Screws he was standing back there

and he started to talk to me. We started to talk to each other by the fire. I left there before they did. I left more than the three of them there. I left more than that there. I left Minter and his wife and Mrs. Price and Johnny West and Kelley and Jones.

As to the physical appearance of the sheriff, he acted normal just like he always did. He wasn't cursing or anything. I do not recall whether he had his hat on or not. I did not notice his shirt. I didn't pay any attention to how he was dressed or nothing, did not notice his trousers. He did ask me to go with him to get Bobby Hall and I declined.

(No cross examination.)

56 MR. JOHNNY WEST, 7th witness sworn in behalf of the Government, testified on

Direct Examination.

My name is Johnny West. I live at Newton. I operate a retail liquor store. I know Sheriff Screws. I know Jim Bob Kelley and Frank Edward Jones. I remember the night before Bobby Hall was killed the next morning there in Newton, or so they tell me. Sheriff Screws and Jones and Kelley came to my place that night. I suppose it was somewhere between 9:00 and 10:00 o'clock. I didn't have any timepiece. It was a little after dark, good while. They bought some liquor, I remember one pint, and they drank it, the crowd that was in there, I suppose. It was pretty good crowd went in and out and I waited on lot of people while they were in there; different ones.

I suppose they stayed in there until about eleven o'clock, the way I would figure it out. While they were in there, there was a pistol fired off. If the sheriff had his pistol I never noticed it. Of course, he is supposed to have one.

and generally do but I never really paid no attention to it if he had one. If Frank Jones or Kelley had one I did not see it. I do not remember seeing any one there that night with a pistol.

The pistol was fired in the back end of the store and I was up at the front end when it was firing is the best of my recollection. Screws and Kelley and Jones were all in the back end at that time. Frank Jones is the only one that danced. He and Mrs. Price danced. I think that was the only one he danced with but there was nobody dancing at the time the gun was fired, if I do not make any mistake.

I immediately went back there when the gun fired. I never found anything back there except the same crowd was there and I seen where the bullet went in the floor. I went around and looked at it. They were talking about it back there but to tell you the truth I don't even remember what they were saying. Just as soon as the pistol fired, Jack Minter and his wife were in there and they left out; in a few minutes they came back and got Mrs. Price, or Jack Minter went out and she went out with him, and I was waiting on somebody up at the front end of the store getting them a cold drink of some kind when the gun fired to the best of my recollection.

I heard some conversation there that night about a negro. I heard Kelley tell the sheriff; said we are wasting time or burning time, something or another to that effect, and said if you don't let's go, we will miss that negro or that party or that fellow.

The three of them did not leave there together. Kelley and Jones went out ahead and Claud, the sheriff, stayed in there a minute or two after they left out or a few minutes. Sheriff Screws told me he was going to arrest a negro, Bobby Hall, or was going after him, told me he was going after him. He said he was going after Bobby Hall. They left out and I told the sheriff if I was him

that I wouldn't go, not that night, that I would wait until some other time, until the next day, is the best of my recollection.

Q. Why did you tell him that or give him that advice?

A. Well, Kelley and them were all drinking and I could tell that he was drinking some, that the sheriff was and I just thought I would just ask him as a friend, thought probably it would be better. I told him to go on home. The best of my recollection this was about eleven o'clock as well as I can judge.

58

MRS. JOSEPHINE PRICE, 8th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Mrs. Josephine Price. I live at Newton. On the night of the 29th of January of this year, the night Bobby Hall was killed, in Newton, I was in Newton that night, and I went to Johnny West's place there. I went with Mr. and Mrs. Jack Minter.

I know Sheriff Screws, Frank Jones and Jim Bob Kelley. I saw them at Mr. West's place on that night. I was there with my friends. I do not know how long they stayed there. I left them there. They were there when I got there and I left before they did. I imagine I stayed there 20 or maybe 30 minutes. I found Sheriff Screws, Jones and Kelley there when I went to the place and I stayed there 20 or 30 minutes, right about that, I do not know just how long, and when I left there, I left Screws, Jones and Kelley there. I do not know what they were doing. I didn't see them doing anything. I do not remember whether they were sitting or standing. I do not remember anything at all about what they did. As

to there being any reason for my recollection being hazy, it just didn't register. I just didn't notice them.

Nothing happened while I was there. I heard something and I thought it was a gun. I was in Mr. Johnny West's place when that happened. I was in the room where they were dancing at that time. I danced with Mr. Jones a little. I heard a noise which I thought was a shot. They said it was. I do not know who said it. Jones did not say it. I do not remember Kelley saying it and I wouldn't think Screws said so. Mr. and Mrs. Minter were also in there. I don't even remember if we six were the only persons in the room at that time. I do not remember who was in there.

I couldn't say that the sheriff had a gun. I would figure that the sheriff had a gun, he had a right to. I do not remember seeing one. I do not remember seeing a gun on him or a black jack. I do not remember seeing a gun on Kelley. Minter did not have a gun. I did not see anybody in that room with a gun. I do not know how it happened.

As to the appearance and demeanor of Kelley and Jones and Screws when I went into the bar-room, they just acted natural to me. By natural I mean just like they always act. They did appear to be gay a little. I did not see any liquor there. I didn't stay there all evening.

I do not know how large this room is that we were in and that the shot was fired in. I couldn't even begin to say. I would think it was as long as from me to the district attorney and I imagine it was about as wide as from him to me. I think it was larger than that. I just don't know how large it is. I do not know.

(No cross examination.)

60 MRS. VELMA MINTER, 9th witness sworn in
behalf of Government, testified on

Direct Examination.

I am Mrs. Velma Minter. I live in Newton and I was living there on the 29th of January of this year. The night of the 29th of January, the night that Bobby Hall was killed, my husband and I went to Johnny West's place with Mrs. Josephine Price. She was a member of our party.

I know Sheriff Screws, Frank Jones and Jim Bob Kelley and I saw those three men that night. They were at Johnny West's place. There were not doing anything, not a thing at all. I do not know how long they stayed there. I think they were there when we left. I won't be positive but I think they was. They were there when we got there also.

I heard something that night but I couldn't swear it was a shot because I didn't see it. It was either a car back-fired or a shot. They had the victrola playing. I was in the back-room at Mr. West's. I do not know where the noise occurred at. I went in the back-room that night and back there was myself, my husband, Mr. Screws, Mr. Jones, Mr. Kelley and Mrs. Price six of us. Jones and Screws had guns. I saw nobody else there with guns. I did not see a bullet in the floor there, did not. I stayed there about two minutes after this explosion or whatever it was occurred. I had already started out. When I left I left Jones and Kelley and Screws there, according to the best of my recollection.

(No cross examination.)

61. MR. LOREAT HATCHER, 10th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Loreat Hatcher. I live at Newton. On the 29th of January this year I was operating a beer and wine stand there. I remember the night of Bobby Hall's death there. I know Frank Jones and Jim Bob Kelley. I have known Mr. Jones for three or four years and Mr. Kelley I have been knowing him practically all my life.

On this night, the 29th of January, the negro school had a dance there. I saw Frank Jones and Jim Bob Kelley on this night. They came up there to my place and came in and bought some beer and some wine, and drank it there in my place of business. I do not know how long they stayed there, but fifteen, or twenty, or thirty minutes, something like that. I imagine it was around 10:00 or 10:30, something like that. That is my estimate about it. They stayed there somewhere in the neighborhood of 30 minutes, something like that. I do not think they bought beer and wine more than once. I think they drank it just before they left. One drank some wine and the other a bottle of beer. I think Mr. Jones drank a bottle of beer and Mr. Kelley was drinking wine.

I was about 30 foot from the car they drove up in and I seen it out there. I couldn't say whose car it was.

(No cross examination)

62

MR. JOHNNY WEST, 7th Government witness,
recalled, testified further on

Direct Examination.

I did not take the shot or bullet out of the floor when I heard the shot fired in the back end of my place and went back there. I seen it. I seen where it went in and where it had bulged the floor. It went in this way and bulged the next board up, narrow board you know, went in ~~one~~ board and come out and bulged up and made a raised-up place where it almost come out. You could almost see it. And then about a week after then Jack Minter was helping me and I got him to repair the floor on the far side of where this shot they fired, where this bullet was in the floor and I started and finally taken it out, taken a knife and gouged it out.

I know what finally became of the bullet now. I first thought I throwed it away and I told the FBI that. They wanted to see it and I told them it was battered up so bad that nobody couldn't tell anything about it, and I told them I thought I throwed it away; and after then Jack, me and him was talking and I remembered by him reminding me that he taken it and carried it off with him and he told me that he gave it to little Billy Joe Price. Mrs. Price's boy, and he shot it in a sling-shot.

When I went back there after hearing the shot I do not think anybody pointed out to me the place where the bullet had gone in the floor. I just went around and looked and I said who done the shooting and they said well go there and look of something like that; and I went there and just looked around and noticed how near it come to coming out.

The building is about 30 x 30 and the back room, I have a station which takes up little over half of the building, it is about 16 x 30, 30 feet long and 16 feet wide. That is the size of the back room where the dance was going on.

63

ANNIE PEARL HALL (Col), 11th witness
sworn in behalf of the Government, testified on

Direct Examination.

I am Annie Pearl Hall, the wife of Robert Hall or Bobby Hall as he was called. I has one child. Robert and I lived the first of this year on his daddy's place at Newton about a mile and a half from Newton.

I remember, of course, the night that Bobby Hall was killed. He came home that night about 9:00 o'clock. When he got home he ate his supper and went to bed. On Friday night, the 29th, Bobby came home and ate his supper and went to bed. Somebody came there before he got home. There was a car come there and called for him. A car came there before he got home. I asked him who it was and he said it was Mr. Kelley. I did not see the car. It run like an old model, kind-of old car like. It was dark. It was a pretty good while before Bobby got home. It was just first night. I was ironing and I didn't go to the door to see who it was but I asked him and he said it was Mr. Kelley. When this first car came there he wanted to know, he asked where was Bobby? I told him he wasn't home. He asked me did I know what time he would be home and I told him no, sir. I said do there be any message and he said no, said he just wanted him to fix his car light. So, the car turned around and went toward town. I asked the man who he was and he said it was Mr. Kelley. I could not see the man. I did not go to the door. I just asked him. It was dark and I was ironing. I did not go to the door. This occurred a pretty good while before Bobby came home.

After Bobby went to bed and went to sleep I stayed up about half an hour ironing after he was gone to sleep. I then went to bed. Bobby was asleep when I went to bed. I went to sleep. Somebody else came out there that

night. It was Mr. Jones and he come in to the house. He woke us up. I know Mr. Frank Jones, the defendant over here. He is the man I am talking about. He was knocking on the door and it woke us up and Bobby asked who it was and he said it was Mr. Jones and he asked him what did he want. He said he wanted to talk with him. Mr. Jones said he wanted to talk with him.

Bobby got up to light the lamp and put on his pants and opened the door. Mr. Jones did not say what he wanted to talk with Bobby about until he got inside. He told him he had a warrant for him for stealing a spare tire. Bobby got up at that time. He told him he had a warrant for him for stealing a spare tire from Mr. Durham. He either said Mr. Durham or Mr. George. It was Durham. They were the onliest two I know, so he was one of them, Mr. George Durham. Mr. Jones did not have the warrant with him or rather I did not see any.

Bobby told Mr. Jones, "Well, I declare, Mr. Jones, I haven't stole no tire". Mr. Frank Jones said "Well, no damn, short talk about it", told him to get on his clothes and let's go. Bobby started to putting on his clothes. He put on his shirt and then he went to putting on his pants. I mean putting on his shoes, sitting down, and when he went to putting on his shoes, Mr. Jones saw the gun behind the bed, a pump shot-gun behind the bed that I was in. Bobby was sitting in the chair at that time by the fire place putting on his shoes. Mr. Frank Jones told him he had a lot of ammunition around him and he went around and got the gun and worked it and one shell fell out, and he told him he would carry it and keep it until he got back. It was a red shell that fell out on the floor, just one shell.

Mr. Jones also told Bobby he had been before the grand jury to get his pistol back, that he had been before the grand-jury trying to get his pistol and that he had been to a lawyer and called another lawyer's name. He told

him he had seen that lawyer and he saw lawyer Culpepper. Mr. Frank Jones called some other lawyer's name that Bobby had been to see and Bobby told him that he had been to see Mr. Culpepper, Mr. Robert Culpepper at Camilla.

That is all that Mr. Jones said in the house. Only one man came in the house and that was Mr. Frank Jones. There was one man talking back from the car to him and Bobby asked him who it was and he said it was Sheriff Screws. I saw the man after I went to the door to shut the door. There was another man out to the car when I went to shut the door.

Mr. Jones arrested Bobby there at the house and they went on out to the car and they were handcuffing him when I went to the door.

When he left the house Bobby had on shoes and socks and his pants and his shirt. He had on his underclothes too. He had on a yellow shirt and yellow pants. The shirt was kind-of faded like but the pants were real brown. The shirt was kind-of old like, kind-of an old shirt.

When Mr. Jones took Bobby out of the house he carried the shot-gun with him. He didn't give any reason to Bobby for taking the shot-gun. He just told him he would keep it until he come back. He took him out the front door. I went to the door and shut the door and went out the back door.

It wasn't so very far from the front door to the place where the car was. It wasn't as far as from here to the back of the building. It wasn't as far as from me to the back of the building. The spot-light was on, on the car. The car looked like Mr. Screws car. I had seen and I know Sheriff Screws car. I have known Sheriff Screws ever since I have been up here. We moved up here over five years ago. The car was parked right in front of the door. The car drove up in front of my door. When I went to

the door, Bobby and Mr. Jones and this other man were out to the car. The other man was kind-of on the side of the car as far as I could see.

I said something a while ago about their handcuffing Bobby. They were handcuffing him when I went to the door to shut the door. They left the door open when they went out and I got up to shut the door and when I went to the door they were handcuffing him. I shut the door and went out the back door. I had left the house before they left going up to my daddy-in-law's. I went out the back door and struck out for my father-in-law's.

Before the car left my place there I had got up there right in front of my father-in-law's house but I had to cross another road. I hadn't got over to the house. I saw the car leave my house. It was headed back toward town. I went on across to my daddy-in-law's house. They did not pass me in the road. They come up in front of my daddy-in-law's house and come out to the other road.

I went up there and reported to my father-in-law, Will Hall, what had happened. The next morning I went up town with Will, my father-in-law. We drove up in front of the Court-house nearly in front of the Suwanee Store and we got out of the car and went to the jail and Mr. Hall asked them where was Bobby. We got some information about Bobby at Mr. Butler's filling station. We went to the well. I did not see any clothes around the well there. I saw a shoe there. I recognized it as Bobby's shoe. We got to Newton just at sun-up. The sun wasn't quite up. It was real early. We left home early. We went up there to see about getting him out of jail.

I went on up to Albany with Will but we went back home before we went up there. When I saw Bobby he was at the undertaking establishment.

I would recognize Bobby's shotgun if I were to see it.

I said that Mr. Frank Jones told Bobby that he had a warrant for him for stealing a tire from Mr. Durham.

Mr. Jones made no search of the house that night that he arrested Bobby to see if he could find the tire. He didn't ask Bobby anything about it no more than he told him he had a warrant for him, and Bobby told him he didn't get it. No search was made of the premises.

This is Bobby's shotgun. I am familiar with Bobby's pistol and I know would it if I were to see it too. I would say that was his pistol. He had it about three years I think. He carried it in his car in the drawer in the front.

Bobby done mechanic work, worked on cars and tractors like that. He went out through the country working. He was called out at night to do some work on automobiles or trucks. On this date, the 29th of January before he was killed that night, he had been out to Mrs. Fannie Hall's which is about five miles, I guess, five or six miles from Newton. I guess it is about that far. He had been out there working on her tractor that day. He did not come home for dinner.

Mr. Jones came out there about 10:00 or 11:00 o'clock I guess it was. We didn't have no timepiece but it was late in the night.

When I was up there around the well the next morning, around the pool of blood, I saw a shell laying down there on the ground. It was a red shell hull; it was not a shell. It was down on the ground by the blood. It was empty, one red shell. I didn't pay it enough attention to say that it looked like the shell that was britched out of the gun out there at the house but it was a red shell.

I noticed on the ground or the sidewalk that there was a drag from the blood that went through the Courthouse yard on to the jail. It was a drag of blood up the sidewalk. I went on down to the jail and there was blood at the door.

There were three gun-shot shells in my house out there and I gave the three shells to the FBI Agent. These three look like the ones I gave to them because I put my initials

on them. Those were the only three shells left in the house.

Cross Examination.

I said that Robert, my husband, kept the pistol in the pocket of his car all the time, this pistol here.

68 MR. MARCUS B. CALHOUN, 12th witness,
sworn in behalf of Government, testified on

Direct Examination.

My name is Marcus B. Calhoun. I am a Special Agent of the Federal Bureau of Investigation. I have been with the Bureau since October 14, 1940. I am attached to the Atlanta office, field division.

With another agent I made investigation at Newton, Ga. concerning the death of Bobby Hall. Special Agent William H. Crawford, the gentleman sitting there, was associated with me in that investigation. The investigation was started around February 20, 1943. I shall refer to my notes or memorandum to refresh my memory as we go along.

Mr. Crawford and I went to Newton on February 20, 1943 to look into this matter. The first person that we went to down there to interview about it was Sheriff M. C. Screws. Mr. Screws is the gentleman there with the dark glasses sitting right behind Mr. Hager. Mr. Jones is the gentleman with the red and blue tie sitting diagonally in front of the district attorney. Mr. Kelley is the gentleman to the left of Mr. Jones. The first person that we approached after we got to Newton on this investigation was the defendant Screws. We made inquiries as to where he

could be located. He was the first person we interviewed in connection with the case.

We found Sheriff Screws on the road between Camilla and Newton. We went from there to his house, which is on, I believe, the Elmerdell Road, and it was at his house that the interview was conducted. That was February 20, 1943. Sheriff Screws discussed the matter with us. He talked to us freely and voluntarily about it.

Q. Did he make any statement to you as to who killed this Bobby Hall?

The Sheriff did not specify any person as being the individual who actually killed Bobby Hall. He stated that Hall had been killed while attempting to escape after being arrested or while resisting arrest. He stated that Hall had assaulted him and that he had in the defense of his own person had hit Hall around the face and head with his fist and that the defendant Frank Jones had struck Hall several times around the head with a black-jack.

The Sheriff said that he had known this negro Bobby Hall all of Hall's life, that the negro was born and raised in his county. Sheriff Screws said that he had had considerable trouble with this negro for the past two years, that is for two years prior to the time the negro was killed. He described this negro as being, I believe, something in the nature of a biggety negro, that he considered himself to be a leader among the colored people in the community. He said that he had not ever made a case against this man but that he arrested the man on one occasion at the request of the Sheriff of Mitchell County.

As to the occurrences on the night of the killing, January 29th, Sheriff Screws said that he was in his office around sundown of January 29th working on some of his tax books and at that time Mr. George Durham, whom he described as being a farmer in Baker County, came into his office and gave him a warrant which was drawn by Mr. T. A. Riley, the Justice of the Peace in Newton

County. This warrant was for the arrest of Bobby Hall, charging him with the theft of Durham's tire. I believe the tire was described as a truck tire and a Firestone truck tire. The Sheriff said that he was busy and did not have an opportunity to serve that warrant at the time it was handed to him by Durham. He said that he worked in his office up until around—he said that some time later in the night after he had received the warrant from Durham that Frank Jones, the night policeman at Newton, and Jim Bob Kelley, a resident of Baker County, came into his office. He didn't specify the time these gentlemen came into his office but he stated that at about mid-night on the night of January 29th he told Frank Jones that he had a warrant for the arrest of Bobby Hall for stealing a truck tire and requested that Jones serve the warrant on Hall. Sheriff Screws said that he asked Jim Bob Kelley to go with Jones to serve this warrant and told him to take his automobile, that is the Sheriff's automobile.

The Sheriff said that they left his office to go after Hall. He stated that approximately 30 minutes later, that would be about 12:30 A. M. on the morning of January 30th, he had left his office and was standing by the well at the Courthouse square in Newton, getting a drink of water, when Frank Jones and Jim Bob Kelley drove up in his car. He said that he asked them if they had been able to get Hall and about that time he saw Hall seated in the back seat of his car. He did not say where Kelley and Jones were seated. I do not think he indicated specifically where they were seated, but he stated that he opened the back door of the car and told Hall to get out. He stated that as Hall started getting out of the car he had a shotgun in his hand and the Sheriff didn't exactly know where he got the shotgun and he said he came out of the car with a shotgun as if he was going to shoot the sheriff with the gun or assault him with the gun. Sheriff, Screws

stated that he knocked this shotgun into the air and it discharged into the air as Hall was getting out of the car.

He said that he immediately attacked Hall with his fist, beating him around the face and head and called to Frank Jones to help him out. He said that Frank Jones was standing in a position sort of behind Hall and began hitting him with a blackjack. The sheriff said that Jim Bob Kelley ran in and seized the gun and wrested it away from Hall. The sheriff said he did not know how many times he hit Hall or how many times Jones hit Hall. He said it took several licks before Hall fell to the ground. He stated that after Hall fell to the ground no one struck him any more.

The Sheriff told us that after Hall fell to the ground, Jones and Kelley picked him up, one taking him by each arm and carried him through the Courthouse by the office to get the key for the jail, then out to the jail where they put him in jail. The Sheriff said that he did not go to the jail himself but went back to his office. He told us that after they put this negro in jail, they came back to his office and he inquired as to Hall's condition, and that Jones told him Hall seemed to be pretty badly injured. The sheriff said that he made a long distance call to Dr. Barnett in Albany, telling him that he was going to send a negro patient to Albany and requesting that Dr. Barnett furnish the necessary medical care. Sheriff Screws said he then called the hospital, the Phoebe Putney Hospital, in Albany and requested that they send an ambulance to Newton to get a negro patient. He told us that he and Jones and Kelley all remained in the office until the ambulance arrived, and then Jones and Kelley went out to the jail to help the men on the ambulance put the negro in the ambulance. He said that he did not go to the jail and as a matter of fact did not see Hall after he was taken from the well and put in jail. He did not state that he never went to the jail that night. He stated that

he did not go to the jail when they carried the negro and put him in the jail and that he remained in his office after he was put in jail and until the time the ambulance arrived and that he did not go to the jail at that time.

Mr. Crawford and I interviewed the Sheriff on two occasions. A third time we talked to him and asked him if he had any additions that he would like to make to the previous interview, at which time he stated that he did not. What I have just related is the substance of the first interview with the exception of this statement: We specifically asked the Sheriff whether or not this negro was handcuffed at the time that he was brought to the jail—at the time that he was brought to the well. The sheriff said that he was not handcuffed at that time and that the negro was not handcuffed at any time in his presence.

During our first interview there the Sheriff did make some mention of Bobby Hall coming to his house some time in December about a pistol. The Sheriff stated that some time, I believe he said around the middle of December, Frank Jones, the night policeman in Newton called him and told him that Bobby Hall was in Newton, had been drinking and had a pistol. The Sheriff said that he told Jones to get the pistol from Hall and if Hall was drunk to lock him up; if he was not, to tell him to go home. He stated that shortly after this conversation Hall came by his house and told him that Jones had taken his pistol. He told Sheriff Screws that Jones had taken the pistol and that Hall requested that the Sheriff give him an order to get the pistol back. The Sheriff stated that he told Hall that he would have to check into the matter before he could give him the pistol.

The Sheriff told us something about Bobby's father coming to see him about the pistol. He said that Willie Hall, the father of Bobby Hall, came to see him shortly after this and asked him about the pistol and that he told

him he would have to check up on it. He said that Willie Hall came to see him a second time and he told him then that he would have to see Judge Crowe in Camilla before he could get the pistol back.

The Sheriff said something to us about Bobby going before the grand-jury in January. He said that around the middle of January he was called, the sheriff was called; before the Baker County grand-jury and asked to relate the circumstances surrounding the occasion where Frank Jones took the pistol from Bobby Hall. The sheriff stated that he testified before the grand-jury about this pistol and that the grand-jury did not take any action in regard to the pistol.

The Sheriff in the interview said something about having received a letter from Robert Culpepper, an attorney at law. He stated that he had received a letter from Mr. Culpepper about Bobby Hall's pistol. He said that he received this letter on the same day that Hall was killed or on the day preceding the day Hall was killed. He was not sure whether he received it the day he was killed or the day before he was killed but stated that it was one of those two days.

The Sheriff delivered to us a warrant that he said was placed in his hands. This is the warrant that he delivered to us. I had some discussion with the Sheriff about who wrote that warrant. The sheriff said that he did not know who wrote the warrant. He said that the warrant was given to him by George Durham and he did not know who wrote the warrant. I believe he told us that the first time that we interviewed him. We secured the warrant on the date of the first interview.

Some time later, several days after that, after we previously interviewed the sheriff, we examined the docket book of the Justice of Peace there at Newton.

I said that we interviewed the Sheriff a second time. I would say that was about three days after the first inter-

view, which would have made it around February 23, 1943, and I believe that there were three interviews and on a fourth occasion we went and talked with the Sheriff and he said that he had nothing else he wanted to say; so that would be three interviews instead of the original two that I mentioned.

I said we examined the dockets of the Justice of Peace. The docket at that time was lodged in Sheriff Screws' office. We made some photographs of docket entries in that docket. These are the photographs that we made. We had some discussion with Sheriff Screws concerning the entry of the warrant for the arrest of Bobby Hall. That was the entry that we were interested in. We asked him about the handwriting in that particular entry on the docket. The Sheriff stated that that was not his handwriting and that he did not recognize that handwriting, that he did not know whose handwriting it was. He was specifically asked whether or not he had made that entry or any other entry in the docket book of the Justice of the Peace and he stated that he had never made any entry whatsoever in that book, that he had never made any entry.

Sheriff Screws did not make any statement to us as to the position of the shotgun in the automobile when Kelley and Jones arrived with Bobby Hall at the well that night. He did not make any statement as to the position of the gun in the car. The first mention he made of the gun was that the gun was in Hall's hands.

The Sheriff stated that he had not been drinking any that night. Sheriff Screws turned over to me and to Mr. Crawford this pistol and the shotgun that has been identified here.

The Sheriff stated to us that he was working on tax books in his office at 12:00 o'clock or 12:30.

After interviewing the Sheriff, I believe the next person we interviewed was Jim Bob Kelley.

Q. Did he make any statements to you?

A. Yes, he did.

Q. Freely and voluntarily?

We found Mr. Kelley on the road between Newton and Elmerdell. This was on February 20, 1943, the same day we interviewed the sheriff the first time. He talked to us freely and voluntarily. We offered him no hope of reward and did not try to intimidate or arouse his fears in any manner. We talked to him on the road between Newton and Elmerdell, I would say about five miles out of Newton on the Elmerdell Road. This was approximately an hour or maybe a little longer after we had left the sheriff. The time between the two interviews was consumed in trying to locate Mr. Kelley.

The day of the killing was January 29th or the early morning hours of January 30, 1943. This interview with Kelley was on February 20th. Kelley stated that on the night of January 29th, around 11:00 o'clock, he had gone to Sheriff Screws office in the Courthouse to see the sheriff about buying a piece of real property from the sheriff. He said that while he was there Frank Jones came into the Sheriff's office and after Frank Jones got there the sheriff told Jones that he had a warrant for the arrest of Bobby Hall. This was Kelley talking to us. He said that the sheriff asked Jones to serve this warrant on Hall and asked him to go with Jones to serve the warrant.

Kelley stated that he and Frank Jones went in the Sheriff's car to Bobby Hall's house. I do not believe he made any statement as to which one of them drove the automobile. He said that they drove from Newton, Georgia, out to Hall's home, which is located about a mile and a half out of Newton on the Colquitt road, that when they arrived there they stopped the car and Jones went into the house and he remained in the car. Kelley stated that he waited in the car for three or four minutes and then got out of the car and walked up to the front of the house.

He said that the door was cracked and that he could see in and that he saw Jones standing inside of Hall's house with a shotgun in his hand and said about that time he saw the negro Bobby Hall coming out of the front door. Kelley stated that on the way from Hall's home back to Newton, Hall said—that Hall sat in the back seat and he and Frank Jones sat in the front seat of the Sheriff's automobile. He stated that they had taken this shotgun and placed it between them in the front seat with the butt resting on the floorboard and the barrel leaning against the back of the front seat. Kelley stated that Hall was not handcuffed, that his wrists were not bound or restrained in any manner whatsoever. We asked Kelley if he was handcuffed. We asked that specific question.

Kelley also stated that on the way from Hall's house to town Frank Jones asked Hall what he did with the automobile tire and that Hall had said something to the effect that he didn't get any damn tire. He told us that this was the only conversation which took place between Hall's home and town. Kelley stated that when they drove up in front of the Courthouse at Newton, Sheriff screws was standing by the well. He said that Frank Jones got out of the automobile and said "Sheriff, here's your man."

Kelley stated that the sheriff attempted to open the left rear door of the automobile but it was locked and that he had to come around and open the right rear door. I do not believe Kelley said which side of the car he was on. O yes, he did, he said that the sheriff had to come around to the right side of the automobile to open the door and that was the side he was sitting on, that is the right side of the automobile. Kelley stated that when the Sheriff opened the right hand rear door of the automobile, the negro said "Looks like you damn white sons-o-bitches are going to lock me up anyway." He said that the negro then grabbed the shotgun by the barrel. Kelley stated that at this time he was still seated on the front seat of the

automobile and that when he saw the negro grab the gun by the barrel he caught the stock of the gun in his left hand, the stock being on his left side. He stated that at that time Jones and the Sheriff were on the outside of the automobile. He stated that the negro succeeded in getting the gun away from him and got out of the car with the gun and that immediately as he got on the ground the sheriff and Frank Jones both attacked him or started hitting him around the head. Kelley stated that the sheriff was beating the negro around his head with his fist and that Jones was hitting him with a blackjack.

Kelley said he did not remember whether the gun remained in the hands of Frank Jones or in the hands of the sheriff or whether it was thrown on the ground. He did state that he never touched the gun after he had gotten out of the car and after the negro had succeeded in wrestling it away from him in the car.

Kelley also stated that he did not know how many times the negro was hit but estimated that he received quite a few licks around the head. He stated that the negro was beaten to the ground. He said that after the negro was beaten to the ground he and Frank Jones picked him up, one taking each arm, and walked him through the Court-house and over to the jail. They said they put him in the jail and locked him in there.

Kelley stated that from the time that the negro attacked or attempted to attack the sheriff or assault the sheriff with the gun, that the negro made no other statement; that he made no other statement and did not utter any sounds. He also told us that the negro was wearing shirt, trousers, socks and shoes during the entire episode.

Kelley made some admission that he had had something to drink that night. He said that he had had one bottle of beer about an hour before he went to the sheriff's office but that he did not drink any other intoxicating beverages that night.

Upon the first interview Kelley stated that he did not know whether the gun was loaded or not because it was not fired in his presence or hearing. He made that statement when he was first interviewed on February 20th. His first statement was that the gun, that he didn't know whether it was loaded or not because it was not fired in his presence or in his hearing. He later made another statement about that. He later qualified that or changed that statement to the effect that although he was not positive, he believed that the gun was fired during the altercation that took place after Hall got out of the automobile.

We next interviewed Mr. Frank Jones, one of the defendants here. We interviewed him on the late afternoon of February 20th, the same day. The actual interview was conducted about, I would say, about a mile out of Newton on the Coquitt Road. We met him in town in Newton and drove out on this road. The fact that we drove out of town on this road was of no special significance. We simply had no office or other place available to conduct the interview except in the automobile and we just drove away so we would not be in the crowd there in town.

I would estimate the population of Newton to be about 300 or 350 people. It is built around the Courthouse square and is the county site.

Mr. Jones made some statements to us. He talked freely and voluntarily without any inducements or any threats or any intimidation whatsoever.

Mr. Jones said that around 11:00 o'clock on the night of January 29th he went into Sheriff Screws' office and found the sheriff there with Jim Bob Kelley. He said that the sheriff told him that he had a warrant for the arrest of Bobby Hall and wanted him to arrest Hall. Jones stated that the sheriff gave him the warrant and deputized Kelley to go with him to serve the warrant. He said that the warrant was for the theft of a tire. Jones stated that

he and Kelley drove out to Bobby Hall's home in Sheriff Screws' car, that he and Kelley got out of the automobile and went on the porch. He said that he knocked on the door and Hall came to the door. Jones stated that he went into the house and that Kelley waited on the porch. He made some contention about Hall having had something to drink. He said that Hall had had something to drink because he could smell it on his breath. That is what Jones said.

Jones stated that he went into Hall's house and that Kelley remained on the porch. He said that he told Hall that he had a warrant for his arrest and Hall put on his trousers and sat down on a chair at the foot of his bed and began putting on his shoes. Jones stated that there was a shot-gun leaning up against the wall at the head of the bed and that Hall looked in the direction of this shotgun and raised up in his chair like he was going to get on his feet. Jones stated that at that point he drew his pistol, pointed it at Hall and cautioned him against trying to get his gun.

He stated that after Hall had finished dressing, he carried Hall out and put him in the car. He said he had his pistol out from the time he drew it until the time they got Hall in the car. Jones also stated that he did not conduct any search of the premises in an attempt to locate the truck tire.

Jones stated that going back to town he and Kelley were on the front seat and that the negro was in the back. He said something with reference to the position of the shotgun. He said that the shotgun was between him and Kelley in the front seat, with the butt of the gun resting on the floorboard and the barrel resting against the back of the front seat.

Jones said that when they got to town that he got out of the car on the left-hand side and that Kelley got out on the right, that Sheriff Screws opened the right-hand back

door of the automobile and told Hall to get out. He said that the negro said, "It looks like you white sons o' bitches are going to get me anyhow", and came out of the car with the shotgun in his hand. Jones said that Kelley grabbed the gun and pushed it upward and it went into the air, I mean said the sheriff grabbed the gun and it went off up into the air. He stated that he immediately rushed in and got hold of Hall and started hitting him on the head with blackjack trying to knock the gun out of his hands. Jones said that Kelley came into the fracas, grabbed the gun and that after Kelley got the gun he and the sheriff continued to beat the negro until they knocked him off his feet.

Jones said that he and Kelley took the negro, one by each arm, and walked him through the Courthouse to the jail and put him in a cell over there. He said they left him standing up in the cell and locked the door. He said they left him standing up in the cell.

Jones said that as Hall got out of the automobile he had a shotgun and made the statement, as I said before, to the effect that "It looks like you white sons o' bitches are going to get me anyhow."

Jones said that after they put the negro in jail that Sheriff Screws called the hospital in Albany and asked them to send the ambulance for him and that two negroes came from Albany in an ambulance to get the negro. He said that the negroes on the ambulance asked him who it was and he told them it was Bobby. He said one of them asked had Bobby been in a wreck and he said yes or uh huh or something in the affirmative.

We asked Jones in this interview, as to whether or not Bobby Hall was handcuffed. He said at no time did they put any handcuffs on him or any type of restraining device on Bobby Hall.

What I have just testified here is the substance of the conversation or the interview that we had with the defendant, Frank Jones.

Mr. Jones gave us the blackjack and this is it. I would estimate the weight of this blackjack as about four pounds or rather about two pounds I would say. He gave it to us voluntarily.

In the interview with Kelley we asked Kelley whether or not he and Jones searched Bobby Hall's premises for the tire. We asked that question and he said that insofar as he knew no search of the premises was made.

I do not recall that these three defendants were the first three people that Mr. Crawford and I interviewed in this investigation in Newton. I do not recall that we did not talk to somebody in between them. I know that Sheriff Screws was the first and I am relatively positive that Kelley was the second. I do recall that we had to wait for Frank Jones, that he was out of town and after we finished the interview with Kelley we had to wait until he came into Newton, and it was around, it was after dark or just about dark when he got there and we may have talked to some one in between Kelley and Jones. However, the first day that we were there, we interviewed the defendants just as soon as possible. After that Mr. Crawford and I continued our investigation. We interviewed a large number of people in and around Newton. We were down there looking into this matter from February 20th until about March 2nd.

Cross Examination.

I do not know of my own knowledge whether or not the Justice of Peace's docket of the 971 District, Baker County, stays in the sheriff's office all of the time. We only had it on one occasion and we located it there at that time.

When I was testifying about Mr. Kelley's statement a while ago and I said later he said that he believed that the gun was fired, I did not mean some days later but it was later on the same day and during the same investiga-

tion. Mr. Screws first, Mr. Kelley next and Mr. Jones were all investigation or rather interviewed by us one after the other on the same day. That is the same time that we obtained from those three gentlemen written signed statements about what occurred. Each one of them were separate from the others.

While I was testifying I was refreshing my memory from a written signed statement by Mr. Screws. I believe that I covered the statement rather thoroughly. I am not in position to say that I testified as to everything that he told us that day and that is contained in that statement.

As to Mr. Kelley's testimony I was also testifying or refreshing my recollection from a written statement signed by Mr. Kelley as to what occurred on this occasion. I would not undertake to say that I quoted all that Mr. Kelley told us on that occasion.

As to Mr. Frank Jones I was also testifying from a written statement signed by Mr. Jones on this same day and same occasion. I wouldn't say that I testified to everything he said. I would say that it was covered thoroughly. I do have a written statement before me now signed by Mr. Jones.

With reference to Jones I did actually omit something that was said to us by Jones about what happened. There was some conversation that Jones had seen Hall with a pistol prior to the time that this occurrence took place. Jones said that some time around the first of 1943 he had seen Bobby Hall in Newton with a negro woman named Johnnie Williams. He said that Hall had been drinking at Johnny West's liquor store. Jones said that Hall had called him over to his automobile and shown him a pearl handle 38 automatic. Jones said that he asked Hall if this was the gun he had used in shooting a negro with and that Hall had said yes. Jones said he called Sheriff Screws and told him about Hall having a gun and that the sheriff told him to take the gun away from Hall and if

Hall was drunk to lock him up. He said that Hall was drinking but wasn't drunk; so, he sent him on home.

He made another statement to me just prior to that statement embodied in his written statement. He said that about three years prior to the time of the interview, which occurred on February 20, 1943, that he had been working for the State Highway Department in the vicinity of Bobby Hall's home and that Hall had come out to where he was working and had told him in the presence of four or five other men that the sheriff had arrested him and that he wished that his face had been white and that he would have showed the sheriff something if his face had been white.

I do not believe I made the statement to the effect that I did not cover all the sheriff said. I said I was not sure. I said that I wasn't sure that I covered it all.

Mr. Screws told me that about a year ago that Bobby Hall was involved in a shooting in Mitchell County, that he shot a negro named Burns, the son of Lum Burns. He also told me that he had had trouble with Bobby Hall, that he seemed to be a leader or denominated himself as such and that when a negro got in trouble with the law that he, Bobby Hall, would advise him as to what action he should take.

Q. Why did you omit those?

A. I do not believe I omitted those in the sheriff's statement. I believe I made reference to the fact that the sheriff told us that Bobby Hall considered himself to be a leader among the negroes.

Re-Direct Examination.

Q. I want to ask you one other question about Jones' statement here: When you interviewed him on the 20th of February was he at that time an employee of the City of Newton?

He stated to us on February 20, 1943 that he was not at

that time employed by the City of Newton. He said that he severed his connection with the Town of Newton on February 1, 1943, which was the next day after the killing or two days later. The incident occurred on January 29th or January 30th sometime during that night. He said that he had been discharged by the Mayor for drinking on the job.

The defendants, Screws, Kelley and Jones signed these statements in my presence.

I was quizzed a while ago as to why I didn't testify as to some things in these statements; however, I was attempting to follow the questions and trying to bring out the evidence that the questions asked for. I do not think that I omitted anything that was material in the statement of any one of them.

86 MR. A. B. EDMONDS, 13th witness sworn in behalf of Government, testified on

Direct Examination.

My name is A. B. Edmonds. Recently I am from Mississippi but I was in Newton, Georgia, Baker County, up until the 14th of this past month. I lived in Newton until the 14th of September. I have recently moved down to Mississippi. I have been living in and around Newton all my life. I was born and raised there around Newton. I was living there on the 29th of January of this year.

I remember the night that Bobby Hall was killed, the 29th of January of this year. On that night I was at my boarding place in Newton, my niece's. She married the Chief of Police in Newton. I was boarding with my niece, Mrs. B. D. Edwards. Her husband, Byron Edwards, is the Chief of Police there.

I was aroused on this night the night of January 29th. It was just before 2:00 o'clock in the morning. I was aroused by my niece walking around in the room. I suppose, or talking. I was across the hall from her. She was up. We didn't have lights in the room at that time but I imagine she had a light. I do not know. I was across the hall from where she was. I got up because she talked like she was excited and when I woke I did not hear any commotion out on the Court-house square but I did later, just a few minutes later. I got up and got on my clothes and walked on out on the porch and walked on to the square. Mr. Edwards, the policeman, went with me, Mr. Byron Edwards, the Chief of Police of Newton.

It was right at the edge of the yard where I come up with him, I do not know just where, but I had left the house a few steps and we went on together. Mr. Byron Edwards, the Chief of Police, and I went on together. We walked on around to the well in front of the Court-house right at the Court-house square.

I seen there Sheriff Screws, Frank Jones and J. B. Kelley. J. B. Kelley was standing near the well. He had a shotgun in his hand. Sheriff Screws and Frank Jones, they were off about 18 or 20 feet from me and looked like a body a-lying on the ground. Frank Jones was hitting the body or looked like he was hitting whatever it was on the ground. I couldn't tell, not right at that time, what it was. Later on, I found out it was a body. It was a human body I discovered after he raised up. He was dying on his stomach and he raised up and groaned and lay back down. He never moved any more so far as I saw. When he lay back down I walked on into the Courtroom, into the Courthouse, and went on around back to the house.

While I was standing there I heard Sheriff Screws tell Jones to hit him again. He told him to hit him again about twice, I think, while I was there. I never heard

Jones make any comment about it, nothing only he come back and sit down about the time I walked off. He come and sit down on the wall around the well and said he was tired. He said he was tired, that he had been down with rheumatism or something.

I couldn't tell for sure what it was they were striking the body with. It was a short instrument, looked to be about eight inches long.

Mr. Byron Edwards, the Chief of Police, went to the sheriff. I do not know what he said. I couldn't understand what he was saying. I did not hear Kelley or Jones say anything else, only J. B. Kelley was trying to get them to stop. He was asking them to stop and come on. I said Kelley had the gun.

The only effort that was made about getting the gun was the sheriff asked him to give him the gun. He told him no, said I haven't got no shell for the gun, said the gun ain't no account nohow.

I did not see Screws hit him with that instrument or whatever it was. I did not hear Screws say anything else to Jones except to hit him again. If there was anything said by any one of them there about killing the negro I do not recall it. I wasn't there over a minute or a minute and a half and I walked on away.

Byron Edwards and I did not leave there together. When I left there I went into the Courthouse on the south side and went out on the west side and around and down the Elmerdell Road and back and I met up with the police around about the Suwanee Store. I mean Byron Edwards. The route I took going back home was not the most direct route. I went back that way because I didn't know what might happen and I was out there unarmed and everything and I didn't want to be in the open if any shooting was done.

When I approached the scene of the activity that I described these defendants were talking a little loud but I

don't know and I wouldn't say that there was any profanity. The sheriff, Mr. Screws, looked like he was mad to me. I never paid so much attention to him to see whether anything else was wrong with him or not.

It looked like Sheriff Screws undertook to kick or stomp this body on the ground one time. I don't know which you would call it, kick or stomp. He undertaken to but never done it. The body was on the ground all the time that I seen it. It was on the ground when they were beating him on the head or rather I won't say they were hitting him on the head for I wasn't close enough to tell where they were hitting at.

I won't be positive that I heard the sheriff tell Jones to kill him or any language to that effect. I was interviewed by the FBI Agents and made a statement to them. This is the statement I gave them and it bears my signature. After reading over the statement I can't recall and I can't be sure about that.

Cross Examination.

Mr. B. D. Edwards, the Chief of Police of the City of Newton, married my niece and I was boarding with him along in January of this year.

I was not subpoenaed before the grand-jury in this case. I do not know where Mr. B. D. Edwards is now.

Re-Direct Examination.

I was interviewed after the grand-jury met in Macon. At that time and prior to the time the FBI called on me I had never made a statement to anybody.

89 MRS. A. B. LEDBETTER, 14th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Mrs. A. B. Ledbetter. I live in Newton. I have lived there for the last 25 years, 20 or 25 years, I don't know. I know Mr. Claud Screws and Frank Jones and Jim Bob Kelley.

I was in Newton on the night of January 29th of this year when Bobby Hall was killed. I was aroused during the night. I live on the Courthouse square in Newton in the hotel. It is not so far from the public well. I do not know just how far. I could not give any idea in steps or yards. I could not indicate the distance by pointing out any object. I do live within 50 or 100 yards of the well.

I do not know just exactly what time of the night I was aroused. It was getting late, I know. It was after midnight. Noise was what aroused me over at the well. It was just carrying-on. I can't say just what I mean by "carrying-on". It was cursing and loud talk but no other sounds. I can't say how many there appeared to be.

I got up and looked out toward the well and I saw them over there. I do not know what they were doing. I could see them.

Q. What did you see them doing?

A. I couldn't say.

I do not know how many men there were out there. There were several. I couldn't say how many there were.

Q. Well, were there two or three or four or more or less?

A. Well, something like that but I couldn't say for sure how many there were. I saw one of them leaning over hitting this man. The man was on the ground. That went on out there for some time, I should think as long as 30

minutes. I suppose the man was on the ground all the while but I didn't stay at the window all the time.

All of them out there were using profanity, I think. Not repeating the profane words, I do not recall anything else I heard said about there by any of them. I just heard them hollering and talking. I heard somebody say "Hit him again." I heard some one say "Hit him again." I heard that statement several times. I do not know who was saying that. That was at the time I saw somebody leaning over hitting the figure on the ground. I could not tell what they were striking him with. I can't say whether it was a small object or long object or what.

I could hear the licks. I can't say what they sounded like.

My husband was at home that night. He did not get up at the same time I did. I called him and he then got up. He got up and he went out on the porch, so I went out to the door and got him to come back. I think he had started over there to where the commotion was but I am not for sure. I went out on the porch and stopped him. He called up the policeman. He did not get the policeman. His wife, I think, answered the phone.

I heard a gun fire out there that night. It was a good while after I first saw these parties beating the man on the ground before I heard a gun fire. I can't say how long it was. It was something like 20 or 30 minutes. The gun fired 20 or 30 minutes after I saw them beating a man on the ground. It was just before the beating was over with out there that the gun fired. I do not know whether they were still beating the man on the ground at the time I heard the gun fire or not. I had left the window. The noise died down and subsided soon after that, I think. The noise did not go on so long after I heard the gun fire. I

can't say whether the shot was from a pistol or a shotgun. The gunshot sound was after my husband had called the police.

(No cross examination.)

92 • MR. A. B. LEDBETTER, 15th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is A. B. Ledbetter. I live in Newton. I am the husband of the lady who just left the stand. I was in Newton the night of January 29th of this year when Bobby Hall was killed. I was awakened that night by my wife about 1:15. The time there then was the same kind of time that we have here now, the time we now have. I have a farm there in one mile of Newton and I work with the Holt Mule Company, been with them 20 years.

On this night when my wife called me I got up. My room is the second room from the highway out there and I got up and went to the window. I would say it is 50 yards from my room to the place out there where this commotion was going on at the well. The lights were on out there, the one in front of my house and the one in front of the post office. I could see all right.

When I got up I went to the window and I saw it was three men on one. Well, I went out on the front porch. The one man was down on the ground and I saw it was three men on him beating him and I didn't know what in the world to do. In other words, I stood there and looked at it a few minutes and I come back in the house and went and dialed my telephone to the police and asked him would he come around there that there were three men around there killing a man and some lady answered the

telephone. Just as soon as I dialed she answered and said Mr. Byron had already gone around there. That was the policeman but I never did see the policeman.

I heard these three fellows say something when they were hitting this man. I just heard them say, "Hit him again, hit him again". That went on out there until about a quarter to 2:00. It went on for 30 minutes after I got to looking at it. The first thing I saw this man was on the ground and they were beating him.

All three of them beat him one at a time. When one would beat him a while the other one would take it and beat him a while.

I heard a gun shot out there about 15 minutes after I had gotten up and gone to the window. It was after I had called the Chief of Police that I heard the shot. It was one shot or one shot is all I heard.

There was a car standing just this side of the well parked into the sidewalk and one man got in the car and drove around the block and the car stopped over there in front of the Sing Oil Company and blew and then he come back around and parked and while he was gone around two men drug this fellow away, dragged him away. They just took hold of his legs and drug him off. They dragged him from the well to the Court-house, dragged him up the sidewalk and into the Courthouse. I saw them do that. I do not know what two men it was.

I saw the pool of blood there the next morning. I would say it is 30 or 40 steps from the well and the pool of blood to the Courthouse. I went out to the well the next morning. I did not go in the Court-house. I did not follow the trail of blood into the Courthouse.

One of the three men drove off in the car and the other two men drug him off into the Courthouse. I did not see anybody kick him while he was on the ground. I would say I witnessed the beating out there 30 minutes. I could hear the licks and I could see them reach down and hit

the man on the ground. I could hear the licks. I heard a groan when I first got up but he didn't groan long. They kept on beating him after he quit groaning.

I saw the pool of blood the next morning. It was a pretty good size pool, I would say at least a place 3 x 4, three feet by four feet. I could not tell what sort of an instrument they were beating him with from my house. It looked like it was a blackjack because they had to reach over and hit him like that (indicating) I could see them reach over.

I say I saw all three of them beating him. They took turn-about. I couldn't say whose voice it was that said "Hit him some more". I couldn't identify the fellow by his voice.

There was no profanity except some of them said "Hit him again, damn him hit him again". I do not know how long that had been going on. My wife waked me up.

Cross Examination.

Mr. Screws and I have always been close friends. We always have been close friends, personal friends. I am just telling what I saw. We are supposed to be friends. He never has done anything to me and I never have done anything against him.

Q. You just pass and repass though and that is the extent of your friendship?

A. We are friends, I reckon.

Q. Don't you know that the extent of your friendship is just passing and repassing?

A. He never has done anything against me and I never have done anything against him.

There is a street light right in front of the hotel. That street light is some 20 steps from the doorsteps of the hotel to the right, just across the highway. Then there is

another street light straight across to the post office. I mean over to the post office. This light was on. Both of the street lights were on that night. I couldn't have seen all I saw if they had not been on. I paid particular attention to the light that was on over at the post office and I know that it was on. I do not know that the light over at the post office is shaded out of the Court-house square by two oak trees. The light comes through an oak tree but you can see. You can be on my front porch and see the water run out of the well at night. The oak tree to the right of the light looking toward the hotel porch might shade the light but you could see all right. There were no leaves on the tree at that time of the year. In other words, you can sit on my front porch and see the light shining just like it is right now and leaves are on the trees now. So, of course, you can see with the leaves off. You can see whether the leaves are on or off, it doesn't make any difference. I do not say that you can see from the light that was in front of the hotel. From the light in front of the hotel you could not have seen what was going on and if the other light had not been on I could not see what I have testified about.

Re-Direct Examination.

The thing was in plain view to me and plainly visible. I was asked how long I witnessed this commotion out there, this beating. I got up at quarter after 1:00 because I went back in there and when I went back in to use the telephone to call the policeman it was 20 minutes after 1:00 then and when I left the front porch and got on the inside of the house I left the front room and got on the inside of my room in about ten minutes, I guess, the clock struck 2:00.

The gun fired about half past 1:00. I had been up about 15 minutes when it fired, when I heard the gun fire. I

do not know whether it was a pistol or shotgun or what. I had witnessed the beating there for 15 minutes before the gun fired.

96 MRS. OLLIE JERNIGAN, 16th witness sworn by the Government; testified on.

Direct Examination.

I am Mrs. Ollie Jernigan. I live in Brunswick right now. In January of this year I was living in Newton. I was living there the night that Bobby Hall was killed, on January 29th. I lived on the east side of the Courthouse square in Newton. I would judge that is about 50 or 75 yards from the well.

I was in Newton at home that night. I was aroused during the night about 12:30 or 12:20 when I first heard it. I heard a lot of loud talking in front of my house and toward the well, toward the Courthouse square. I couldn't tell how many people were talking. I could see them moving out but I couldn't tell just how many people there were.

I had not gone to bed at the time. My husband left about 11:00 o'clock to go to work. He was working at Darr-Aero-Tech here at Albany. I had not retired when I heard this noise.

I went to the front door and fastened it. We were there by ourselves and I heard this talking and I opened the door and I could hear all this talking and these terrible licks. So, I closed the door and went to the window and I could see people moving about but I could not tell how many people.

I heard some profanity out there. I couldn't tell exactly whether it was from more than one person but I imagine it was from more than one person. When I went to the

window and looked out there toward the well, I just saw people moving about and I couldn't tell exactly what they were doing but I could hear some awful licks and I just judged that somebody was getting a terrible beating or something. The licks sounded like car doors were slamming. From where I was standing I could not see the motion of the licks being inflicted by those moving around. I heard several licks.

I really do not know how long that went on out there. I went back in my room and then I heard a gun shot and after I retired I still heard the licks. It was just a few minutes after my attention was attracted and I heard the licks before I heard a gun shot. It was not over ten minutes.

I couldn't tell exactly whether the person who was being hit or beaten was on the ground or not. I could tell it was from the same direction. I do not know how long the entire transaction lasted from the time I was first attracted, as I was so excited but it seemed a long time to me. I would say it was 30 or 40 minutes or maybe longer. I did not go back to the window and watch them any further. I didn't go back up there any more. I had already gone back to bed when I heard the gun fire. After I went back to bed I do not know how long the licks continued. It was a good while.

I recall some particular language that was uttered out there in connection with the beating. I could hear him say, "Hit him again, hit him again" and use profanity. And after I heard that, I heard more licks. It was after that that I heard the gun shot.

Cross Examination.

At that time I lived in the home owned by Mrs. Livingston. Being on the porch of that home my view to the artesian well would not be obstructed by the store build-

ing. There is not any part of the porch that your view would be obstructed of the well, the artesian well. I do not mean that you could sit on any portion or any part of the Livingston home porch and see the hotel but you could see the well. I would think you could see the well from any point on the porch of the Livingston home. I am sure I could. I am positive that I could and that the Radford store building would not obstruct your view at all.

I said that I went back in the room and looked out the window and saw some persons out at the well. I saw an automobile. The automobile was beyond the well, parked between the well and the street light, that is the street light in front of Mr. Ledbetter's; and between me and the parties at the well there was no obstruction whatever. I just don't know whether the light in front of the post office was on that night or not. It seems to me it was off. It could have been on but I was just so excited I don't remember. I could still see though.

It is not true that if the light in front of my home or in front of the post office, if it had been on, that the reflection from the light from the window out of which I was looking would have blinded my view as to any object at the well. In other words, the light at the post office, if it had been on, would not have blinded my view to the well. It still wouldn't blind me because the shrubbery around the house would cut the view of the light at the post office. I say the shrubbery around the house, that it wouldn't blind me at all that I could still see out of the window. The shrubbery would prevent the reflection of the light. The shrubbery was high enough at the window out of which I was looking to obstruct the light of my room but it still wouldn't cut the view to the well off. I just do not know about the light in front of the post office. I just don't remember about that light. It could have been on or off. I thought it was off, I was just so excited, I guess.

I am definite as to the automobile being beyond me and

between the parties at the well and the hotel. It was parked between the well and the street light and that is between whoever was at the well and the hotel, but I could still see.

99 MR. J. H. JERNIGAN, 17th witness sworn in behalf of Government, testified on

Direct Examination.

My name is J. H. Jernigan. I am the husband of Mrs. Jernigan who just left the stand. I was not in Newton the night that Bobby Hall was killed at the time he was killed. I was working the third shift and I had to be at work at 12:00 o'clock. I do not remember what time I left Newton to go to my work here in Albany. I left prior to that time. I left prior to any disturbance out there in the square.

The next morning when I came home from work I passed by the well there at the public square. I saw blood out there around the well. I saw a lots of blood there and I saw a shotgun shell, a red shotgun shell. I could also tell where something had been drug off. It appeared to have been drug off through the Court house. It was from the pool of blood that it started and proceeded toward the Courthouse. I followed that trail up to the Courthouse and I went on in the Courthouse. There was blood all the way up the trail to the Courthouse. I did not follow it any farther than the Courthouse.

I know Sheriff Screws. I have known him since 1924. After this occurrence down there at Newton Sheriff Screws had some conversation with me concerning it. I do not remember the date. I saw him there in town. It was after the FBI agents had gone down there.

I had left the house and started over to the drug-store and as I passed his car he called me. He was parked in front of Radford's Store. He told me he wanted to talk to me. So, I walked over to the car and he told me to come on around and get in. I got in the car and he says, "Herschel, you know those FBI men are down here investigating that case?" He said, "Well, I understand that your wife saw it?" I told him "Yes". He says "Well you know we have always been friends and I want us to continue to be friends". I told him "Well, I hoped we could." That was all that was said. He mentioned to me that my wife had had a good deal to say about it. His language about that as well as I can quote it was, he told me that he understood that my wife saw it and had had a good deal to say about it and that we had always been friends and wanted to continue to be friends.

Cross Examination.

Q. Mr. Jernigan, refresh your recollection please sir, and see if this is not what Mr. Screws said to you: He asked you, said "Herschel, I would just like to know what your wife knows about it" and you said to Mr. Screws that she don't know anything that will help nor hurt you, wasn't that about what he said and what you said?

A. No, he told me that he understood that my wife saw it and had a lots to say about it and that we had always been friends and wanted to continue to be friends; and I told him that I didn't think that my wife knew anything that would hurt him or either help him.

191 MR. E. M. ELLIS, SR., 18th witness sworn by
the Government, testified on

Direct Examination.

I am Mr. E. M. Ellis, Sr. I live in Newton, Ga. I have not been living in town but about a couple of years, hardly a couple of years yet but I have lived in the county about 27 years. I have been living in Baker County a long time. All except five years I have been living there in Baker County for twenty-seven or eight years.

I know these three defendants, Mr. Screws and Mr. Jones and Mr. Kelley. I remember the night of January 29, 1943 when Bobby Hall was beaten up there on the Courthouse square. My house is on the north side of the square right opposite the jail. I imagine it is about 100 yards from the public well on the square. Part of my house is in 30 feet of the jail.

I was woke up by the racket toward the square that night. It was kind-of hollering and taking on like somebody suffering. That's what I heard. As to whether I heard any profanity, I couldn't understand it hardly that far, I don't reckon but I could understand and I heard them say, "Hit him again or hit him hard" something like that. I just imagined it was somebody fighting, that it was a drunken fight. I say that because they some times have drunken fights in Newton. That was going on when I woke up. I don't think the racket continued but about maybe 25 minutes after I woke up.

I heard a gun-shot. I couldn't how long after I woke up before I heard the gun-shot but it was not but just a few minutes though, I don't suppose. I had heard the going on and had heard them say "Hit him again" before the gun-shot. It wasn't but a little bit after the gunshot before they quieted down in my recollection. They came to the jail next. I would say that the noise and the hollering

continued for several minutes after I was attracted to it before the gun shot. I imagine it was as much as 15 minutes.

I walked out on the porch. It was a pretty cool night and I located where it was at. I knew it was about the public well somewhere; and then I went back and wasn't but a few minutes until the racket all stopped and the car come to the jail. The car come right around from the well to the jail. I was not on the porch then. I went back to bed. I could not tell who came around in the car. I did not see the car or see anybody in it. I heard some voices out there talking. I couldn't say that I recognized any of the voices. I had heard the voice plenty of times but I couldn't say. I couldn't hear or understand anything that they were saying. They put somebody in jail when they drove around to the jail. I really do not know where they brought them from or how they got them there only by the blood that was there the next morning, the blood that came out from the Courthouse to the jail on the jail steps and across the alley there between my house and the Courthouse. There was a trail of blood from the Courthouse on to the jail.

I did not go around to the well right then but pretty early the next morning I did. I saw a pool of blood around there. I observed a trail of blood from that pool on up to the Courthouse.

I had gone back to bed when the car came around. I had gone back to bed when the ambulance came there and got the darky. I just had laid back down on the bed when this car drove up there that I referred to, the first car. I had just gone to bed.

(No Cross Examination.)

103

MRS. RUTH RHODES, 19th witness sworn in
behalf of the Government, testified on

Direct Examination.

I am Mrs. Ruth Rhodes. I live with my father and sisters north of the Courthouse in Newton. Mr. Ellis, Sr. is my father. I live there with him and I was living there in January of this year.

I remember the night Bobby Hall was killed or beaten up on the Courthouse square. I was aroused that night. I had gone to bed and gone to sleep. It was about 1:00 or 1:30 or probably 2:00 o'clock in the morning when I was first aroused. I was aroused when I heard a loud noise out on the street and a gun fired about 2:00 o'clock. It sounded like a lot of just loud talking and cursing and excitement on the street. Of course, I didn't pay much attention to it because it is just a usual thing in Newton for there to be excitement on the street. I would say it went on about an hour after I woke up. I do not know how long it had been going on before I woke up. I would say it was five or ten minutes after I woke up and listened to the noises before I heard a gun-shot. After that, they just stayed at the well for about 30 minutes, I imagine, after I heard them and then they came around to the jail and parked an old car right outside the front. You see, we live right next to the jail and they parked this old car, just parked it there with the motor running. I do not know whose car it was but I know it was an old model. It sounded like a Model "T" or something. I think Jim Bob Kelley has a car. The car he had at that time was some old car, I don't know the model. And then I got up when they came around to the jail, I got up out of the bed and went to the window and I saw Jim Bob Kelley and Frank Jones and I couldn't tell what it was, it was a bulk of something carried in the jail. I saw them go in the jail

and then come out and the car motor was still running and I recognized Mr. Screws out at the car and they were talking loud. He was. I would call it profanity that he was using. I didn't recognize any words but it was extremely loud.

The best I could see from my window Frank Jones had this bulk, I think, by the shoulder and Jim Bob Kelley by the feet maybe, just carrying him along. He was not walking at all. I did not hear the person that they were carrying make any sound at all. I heard them go in the jail.

I did not see Sheriff Screws at all. I did not see the Sheriff. I recognized his voice out at the car and on the front of the jail but I did not see him at all. I saw Jim Bob Kelley and Frank Jones very plain. I recognized them at once. I do not know how long they stayed in the jail after they carried him in there but probably about ten minutes.

After they carried this person to the jail, shortly after they carried him to the jail I didn't know at the time that it was an ambulance—I thought it was Mr. Screws' car—but something drove up and blew the siren just lightly, drove up to the jail and then Frank Jones and Jim Bob Kelley brought the negro out of the jail and put him in this ambulance or whatever it was—I didn't know what it was—and then they left.

I live in Newton now but I do not work in Newton. I work in Camilla for the GFA Peanut Association. I operate the PBX switchboard for the GFA Peanut Association. My sister also works there.

(No cross examination.)

105

MISS ALMA ELLIS, 20th witness sworn in behalf of the Government, testified on

Direct Examination

My name is Miss Alma Ellis. I live with my father at Newton there. I am sister of Mrs. Rhodes and the daughter of Mr. E. M. Ellis, Sr.

I was at home on the night of January 29th, the night that Bobby Hall was beaten up there on the Court-house square. I was aroused that night and the first thing I heard was an automobile, an old model car. I was awakened by that at first. I was awakened by an old model automobile and as soon as I raised up in bed to see where the car was, it sounded at a distance and I raised up and looked up but I still didn't see anything, but I heard voices. I couldn't tell where the voices were but they were back towards the Courthouse. I just lay back down and in a few minutes, or I don't know how long it was, this car came around the Courthouse. But before that I heard a gun fire. Repeating, I was awakened by an automobile, an old model car and when I raised up in bed I heard voices but I still could not see anything because when I looked out I did not see anything out of our window, and after I lay back down I heard a gun fire. I don't know, it probably was two or three or maybe 25 minutes later because I was about half asleep, I guess; but I heard the gun fire and after the gun fired I know it wasn't over ten or fifteen minutes before this old model car drove around in front of our house, passed our house to the jail and the motor kept running; and then we heard more voices and after the voices, I heard the jail door close twice; and then I relaxed and went back to bed; and in a few minutes I heard the voices again, and when I looked out the window that time I saw an automobile, I wouldn't say what kind of car it was but it was a new automobile.

Just the back end of it was all I could see and at that time I heard voices and that was Mr. Screws' voice, I am almost sure, because there were three voices that I could hear distinctly but the other two I did not recognize.

I could not recognize anything that Mr. Screws said, with the car motor running I could not understand anything that was said. I wouldn't say whether that was the ambulance or not because I could just see the back of it. Just before that I heard the siren blow out about the corner and I thought maybe they were bringing somebody into jail because I thought probably it was the sheriff's automobile. That's what I thought it was when I saw the back of the car but I wouldn't say that it was his car. I wouldn't say what it was because I could just see the back of it and I didn't get up far enough to tell.

(No Cross Examination.)

107

MISS ANNIE ELLIS, 21st witness sworn in behalf of the Government, testified on —

Direct Examination:

My name is Miss Annie Ellis. I reside with my father and sisters in Newton. I was there in January of this year. I remember the night that Bobby Hall was beaten up there on the Court-house square, on January 29th of this year.

I was aroused that night. I do not recall just what aroused me but the first thing I heard was noise, groaning. At first, I thought it was dogs and I kept listening and I heard voices and I heard loud talking and heard an automobile motor running. At first, I just couldn't tell from what direction the noises were coming because I was in bed. I did not get up at that time. I listened for a while.

My bed is—we have two windows in our bedrooms practically as large as this one and I just raised up and pushed up one of my windows. Of course, things of that kind are not unusual because I had been disturbed three nights in succession with just such carrying on and I just didn't apparently think anything about it at first. I just thought it was a drunk as there had been drunks for two or three nights doing the same thing and it was just the usual thing around there, just the usual round that they usually make.

And I raised up in bed and pushed my window up and I kept hearing this noise and decided that it was somebody instead of anything else and then I decided—well it kind-of quieted off for a few minutes and then I heard a gun fire. I couldn't tell just exactly how long after I woke up it was before the gun fired. I imagine it was 30 or 40 minutes maybe. I had in mind who it was. I knew about who it was making all this noise. The noises continued after I heard the gun fire for some little bit. I got up and looked out but I didn't see anything, but I could still hear it and I knew it was on across town some distance from us, and I went back to bed and in a few minutes the noise came closer. Then, I heard somebody go in the jail and out because the jail was right next to our bedroom almost. I did not get up to see who it was going in and out of the jail at that time. In a few minutes I heard the automobile come back and I heard the siren and I thought well I reckon they are probably winding up and maybe taking off for the night. And I lay back down again and in a few minutes I heard the jail door and at that time there were two automobiles pulled off. Of course, since that time I have heard one was the ambulance but at that time I didn't know that it was an ambulance. I looked and saw two men come out of the jail. I know who they were. They were Frank Jones and Jim Bob Kelley. They came out of the jail and I heard others

talking and there must have been two people in the shadow of the light. I recognized the voice of one of them, that of Mr. Screws, the sheriff. I have known Mr. Screws for fifteen or twenty years. I could not tell what he was saying because the motor of the car was running and I couldn't understand.

(No Cross Examination.)

108 MRS. OLIVIA EDWARDS, 22nd witness sworn by the Government, testified on

Direct Examination.

I am Mrs. Olivia Edwards. I am the wife of Hoke Edwards. On the night of the 29th of January of this year I happened to be at the jail in Newton, Georgia. I was not in jail as a prisoner. We were there because we thought our husbands was going to leave in a few days and we got permission to go in and stay with them that night. The Sheriff gave us permission to go in and stay with them, gave permission to me and Edgar Bailey's wife. We girls were spending the night in jail with our husbands who were prisoners and had been sentenced.

I did not see Sheriff Screws that night, did not see Frank Jones and did not see Jim Bob Kelley. Somebody came into the jail. Sheriff Screws and Frank Jones came in and I couldn't, I didn't know who the other one was but I heard since that it was Jim Bob Kelley. They all came to the jail that night. The Sheriff opened the door. I do not know whether the others were with him or not. I guess they were. That is what woke me up is when the sheriff opened the door.

My cot was placed on the left as you go in the jail right there at the door. The cots of Mrs. Burke and her hus-

band were in another portion of the jail further back. I was not awake when the Sheriff came there but I woke up when he came in. The sheriff said "Bring him on in." I do not know who he was talking to. He didn't say. When he said "bring him on in", they brought him on in. Frank and the other man brought him in, Jim Bob Kelley or whoever the other man was.

I do not know who it was they brought in. I guess it was a human being but I didn't even see him. I couldn't say whether it was a white man or a negro because I didn't even look. I didn't say I looked. My cot was right there where they passed by it. I do not know how they brought him in. I didn't look. I was laying down and I didn't even get up. I mean to say that I didn't even look at the man.

As to whether the man brought in was handcuffed or not, I heard them talking about it that he was, that he was handcuffed.

It was these three men that brought him in there that were talking about him being handcuffed. The sheriff was there. I didn't hear them say anything about taking the handcuffs off or leaving them on.

After Jones and the other man brought the man in there Sheriff Screws and the two other men went out. After that Frank Jones came back in there. I do not know just how long it was. I have forgotten about the handcuffs.

After Jones and this other man brought this party in there and left it, Edgar Bailey inside of the jail moved the body. They put it there in the room where he and his wife was and he just pulled him on in a cell.

Q. Now Mrs. Edwards, since refreshing your recollection, I asked you earlier who it was that was dragged into the cell when the sheriff said let him in and you said you didn't see who it was, that you didn't see him—Who did they bring in there a white man or a negro?

A. I don't know sir.

Q. Beg pardon?

A. I don't know sir.

Q. You do not know?

A. No, sir.

Q. Now Mrs. Edwards, when the Sheriff told them to bring him in, did you hear Mr. Frank Jones say anything?

A. Yes, sir.

Q. What did he say?

A. He said, well we have brought him four miles, we just as well bring him on in.

Q. Brought him or drug him?

A. Drug him.

Q. Said we have drug him four miles and just as well bring him on in?

A. Yes.

Q. And then they did bring him on in?

A. I guess so, I don't know.

Q. I will ask you, did Frank Jones come back in and take any handcuffs off of this negro?

A. Well he came back in. I do not know just what he did.

112

MR. HOKE EDWARDS, 23rd witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Hoke Edwards. I was in jail at Newton on the night of the 29th of January of this year. I had been sentenced there and was expecting to be sent away some time soon. My wife was permitted to spend the night with me there and another man's wife was also permitted to stay there.

To tell you the truth I do not know what happened in the jail there that night, only I know they brought some-

body in there but I don't know who it was or nothing at all about it. We had the lights off in the jail. The lights were not turned on. The light on the outside was on but the lights on the inside were not.

My wife and I were right in the front on the left side. Mr. Claud is the first one that came to the jail. When he came in I don't remember what he said. If he said anything, I do not remember exactly what he said. I had to get up and move my bed for him to open the door because I had placed two of the cots together. I moved the cots before anybody came in. The sheriff did not tell me to move them. I do not remember whether he said anything or not. When he pushed the door back, it didn't open like it should open and I just moved one cot back. Then, two more fellows came in, Frank the best I could tell and Jim Bob Kelley. They had hold of somebody. I do not know whether they were dragging anybody or how because I couldn't see. I walked on in the back. They were not in there but just a minute or two and they walked on out. If anything was said in there by any of them, I do not remember it.

I couldn't tell whether the man they brought in was handcuffed or not. It was dark and I couldn't see. I did not move the body. This boy that was in there with me, he moved it but I do not know exactly how he moved it or nothing at all about it. I just know he moved it.

I seen Frank Jones when he came back the second trip. I do not know whether they took the handcuffs off of him then or not because I was in the front and he went on in the back.

Q. Mr. Edwards, did you make a statement to the FBI about this matter when you were interviewed?

A. I talked to them.

Q. Well, did you sign a statement, look at that statement?

A. Well, I can't read much and I wouldn't know.

Q. Well, suppose you read the statement there, read it from beginning to end, to yourself there I mean?

A. I can't read this.

Q. Mr. Edwards, I ask you again whether or not Mr. Frank Jones took the handcuffs off of this body that was brought into the jail?

A. I couldn't say because I don't know sir.

Q. You mean you do not know if you do not remember?

A. I do not remember whether he did.

Mr. Short:

We have no questions.

114 MRS. MABEL BURKE, 24th witness sworn in behalf of the Government, testified on

Direct Examination.

I am Mrs. Mabel Burke. On the night of the 29th of January of this year I was spending the night with my husband in the jail there at Newton. I did not see Sheriff Screws come into the jail that night. I was asleep and when I woke up my husband was dragging the negro in the cell. He was bloody some. And later on Mr. Jones came and took a pair of handcuffs off of him. That was after my husband had dragged him into another cell.

Q. Did your husband drag him from the hall into the cell, Mrs. Burke?

A. He was back in the back where we were at and he didn't drag him but just a little piece. He put him in this cell to get him out of my sight. It wasn't very long after

that before the ambulance came. I do not know just how long it was but it wasn't very long.

(No cross examination.)

115 HENRY NEAL (Col), 25th witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Henry Neal. I live in Albany. I work for Mr. C. D. Kenney now. In January of this year I was working for Walter Poteat. He is in the undertaking business.

I remember the night that I went down to Newton and got Bobby Hall, which was about the 29th of January of this year as near as I can come at it. I do not remember the date. I do remember the night I went after him.

About 1:30 or 2:00 o'clock the nurse at the hospital, I do not remember, I do not know what nurse it was called me and asked me could I go down to Baker County, to Newton, to get a man that was down there hurt. I told her "Yes ma'm. I could go", and I got up and dressed and went around on Jefferson Street whether the other boy, Manley Poteat, was and picked him up. He is the son of the owner of the undertaking place, and he and I went to Newton. We drove right in front of the jail. We went down in the ambulance and we stopped in front of the jail-house with the ambulance. I was driving and I got out and Mr. Frank Jones said "Henry, we have got one in here for you to carry to the hospital." I had known Mr. Frank Jones for about three years because I worked there in Newton for about three years. He did ask me what business I was in. He said "Henry, what are you doing now?" and I said "I am in the undertaking business."

And he said "Well, we have got one here for you." I said "Who is it?" He didn't say anything and he went and opened the jail door and when he opened the jail house door, I said who is this? He said "O, you know him." I said "No, sir, who is it sho nuff?" The one that was in the jail house was bloody. And I says to him, "Who is it sho nuff?" And Mr. Bailey, he said, I do not recall his first name but Mr. Bailey, I know him when I see him—we all called him Mr. Hot-Shot Bailey. He was in there and he says "That's Bobby Hall, Henry, you know Uncle Willie's Bobby." I said "Yes, sir."

Without going into all of the conversation Manley and I came out of the jail with Bobby and Mr. Jones helped us. I do not remember Mr. Kelley. We found the man in the jail-house in a cell crawling on his knees. I do not remember whether there was any blood in the cell but the boy's clothes were bloody. Yes, sir, there was blood in the cell. We brought the cot in and picked him up and put him on the cot and put him in the ambulance. I then cranked up and backed out and come on to Albany.

I remember how he was dressed when we got him in the cell. He had on a pair of pants and a pair of shorts and one sock. He didn't have on any shoes at all and no shirt. He was unconscious when we got there.

Q. Now Henry, did you notice the back of his head?

A. After we taken him from the hospital back down to the undertaker.

Q. I mean down there at that time?

We loaded him into the ambulance and we brought him to the hospital here in Albany. I went up into the hospital. I stayed at the hospital until after he was dead. Dr. Barnett said he was dead and then we loaded him back up and brought him to the undertaker, in about 30 minutes as near as I can come at it. He died in about 30 minutes after we got him to the hospital as near as I can come at

it. Manley and I took his body then and carried it to the Poteat Funeral Home.

When we got him at the funeral home we laid him out. We put him on the table. His body was bloody. His head back there, right in this part of his head (indicating) was soft. It was soft and behind the left ear was a hole. His eyes were closed. His face was swollen and his eyes were closed when I got to Newton.

I said the undertaker's name is Walter Poteat. Walter was not there when we got there with the body. Nothing was done to the body before Walter got there, nothing at all. We undressed the body down at the undertaking establishment. When I took the clothes off of him I did not turn them over to anybody. We have a shelf that we put clothes of dead people on and we put his clothes on the shelf. I did deliver the clothes to somebody later on but it wasn't no time soon after then. It was later on in the year. I delivered the clothes, I don't remember who it was but it was some gentleman I delivered the clothes to. I delivered them to the FBI. I remember this FBI Agent here. I remember his face, Mr. Calhoun. When I turned them over to Mr. Calhoun they were in the same condition as when I put them up except that they had probably dried out.

These are the trousers I took off of Bobby Hall because I wrote my name on them myself. There is my name written on them. He did not have on any shoes when we got him down there at Newton. He had on one sock. The one sock that he had on must have gotten mixed up with some of those other clothes that we had there. I do not remember whether I give the FBI agent that one sock or not. The pair of shorts he had on must have gotten mixed or went with them other clothes because I know that he had on a pair of shorts. These are the trousers that he had on.

(No cross examination.)

117 MANLEY POTEAT (Col), 26th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Manley Poteat. My father is the undertaker here. I went down to Newton with Henry Neal to get a body on the 29th of January of this year. Henry came by and got me. I imagine it was around 2:00 or 2:30. I didn't pay any attention to the time, told me he had call to go to Newton. On the way down there he told me he was going to the Newton jail to get a patient to carry to the hospital.

I didn't know any one down there at Newton. Henry knew them all. Mr. Jones, I believe it was, he came over or spoke to Henry and Henry called him "Mr. Frank". Mr. Jones asked Henry was he in the undertaking business. Henry told him yes, sir, and he told him he had one for him.

We went into the jail and got the body. There was blood in the cell there where the body was. The floor of the cell was bloody. There was a pool of blood on the floor. Henry and I raised the body up or lifted it up. I slipped when we were trying to raise that body, slipped on the blood. I really do not know how large the pool of blood in the cell was. I just know there was a large pool where the fellow was crawling around on his all-fours. He was unconscious.

We carried him from there to the hospital. I slipped down in the blood trying to raise him up. Henry and I then took him from the hospital to the undertaking establishment after he died.

(No cross examination.)

118 MRS. MARY DANIEL, 27th witness sworn in
behalf of the Government, testified on

Direct Examination.

I am Mrs. Mary Daniel. I am connected with the hospital here, the Phoebe-Putney Memorial Hospital. I was on duty on the night of January 29th of this year. A negro by the name of Bobby Hall was brought in there that night around three o'clock in the morning.

He had some head injuries and some brush-burns on his body, brush-burns, friction burns over his body. He died in about 50 minutes after he came into the hospital. He was unconscious when he arrived at the hospital. He was in a dying condition when he got there.

I brought the hospital records with me. This is the only record we have at the hospital. The record discloses he had a depressed fracture of the right temporal region, friction burns over the arms, chest and face, completely unconscious, considerable loss of blood from right temporal region. Dr. Barnett saw him before he died. Dr. Barnett came in the hospital in not more than 15 minutes after the patient was brought in.

The body was bloody, especially around the head. That is what I noticed mostly was the head. The body generally was bloody and his clothes bloody, what he had on was bloody. He didn't have a shirt. He was not undressed. He had on his trousers. He was not washed at the hospital.

119 DR. J. M. BARNETT, 28th witness sworn in
behalf of Government, testified on

Direct Examination.

I am Dr. J. M. Barnett.

(Qualifications admitted.)

I live here in Albany. On the night of January 29th I was called to the hospital here to see a negro by the name of Bobby Hall. The sheriff of Baker County called me, Sheriff Screws. The negro was already at the hospital when I arrived there..

I found the negro unconscious with complete exhaustion from the loss of blood due to a fracture of the right side of the skull temporal region and I also found in physical examination friction abrasions on the arms and the chest and chin. By friction abrasions, I mean not fire burns, not raw surfaces but abraded surfaces of his arms, his chin and his chest. I could not say what caused those burns. They could have been inflicted by dragging him on the ground or on pavement or on pebbles.

He lived, I think, about an hour, I think the record shows, an hour or hour and 45 minutes. He died shortly after admission. He was never removed from the emergency room. All the work was done right in the emergency room. He was in fact really in a dying condition when I got to him.

His death, I am positive, was due to the blow in the right side of his skull. I would say that it would be almost impossible to give a direct answer to the question of whether this man with that blow, after the infliction of that blow, would have been able to stand up and walk, either assisted or unassisted. Many injuries that we have of that type and of that character, the patient can walk

for a short time but after the loss of blood, as he lost blood, it would have been impossible for him to walk, stand or even recognize any one at the time I saw him.

(No cross examination.)

120 WALTER POTEAT (Col), 29th witness sworn
in behalf of Government, testified on :

Direct Examination.

My name is Walter Poteat. I am in the undertaking business here in Albany. I have been here working at the undertaking business about fifteen years. I have been in business for myself five years. I have been a resident of Albany about sixteen years.

On the night of January 29th of this year or the early morning of January 30th the body of Bobby Hall was brought to my establishment. I got down that morning about 8:00 o'clock. I found the body in my morgue. Nothing had been done to it that I know of at all. It was still partly clothed. He had a pair of pants on him. I do not recall whether he had a shirt on or not but I know he had on a pair of pants. Nothing had been done to the body at all.

I did not recognize the body when I walked in. I did not know who he was. The body was bloody. When I went into the morgue that morning, of course, the boys told me they had somebody in there and Henry Neal he told me it was Bobby Hall. Of course, I did not know him, not in that condition just like he was. So, the first thing I did was to pull off his clothes and get me some octagon soap and a hose and wash him real good, just scrub him real good all over. The body was bloody.

Before I washed him the body was bloody, had coagulated blood all over him and sand all over the blood; of course, and his hair was bloody and sand all in his hair: His body down through there was sandy and bloody with coagulated blood all over him, front and back and on the side, on his side and on his shoulders.

After I got him washed good I got some octagon soap and washed him, and my table is a drain table and has a big sink and I just washed him off and all the stuff went right off into the sink; and then I began to recognize who he was. I had not been able to recognize him before I washed him. I did not know who he was. I had known him before. I knowed him before this.

And, of course, I went to embalming him after I got him cleaned up and got his clothes off. I washed him off thoroughly and I examined the body. The injuries I found his body in, the first layer of skin was scraped off all on his chest, his face was blood-shotten, his eyes were blood-shotten and his side was scrubbed. By scrubbed I mean just as if he had been wallowing on the ground and scrubbed the first layer of skin off. The first layer of skin was rubbed off; and his right ear was cut in-two. This meaty part here (indicating) was cut. His left ear there was a hole in his left ear just below here (indicating). And the back of his head was crushed in and, of course, when I raised the axillary artery to inject my fluid, I finds the left ear that the brains began to run out of his head, out of his left ear on the left side. And of course, in doing that I stopped injecting the fluid and went to examine his head just to see what was wrong with it. I run a trocar into his right ear, a long instrument, a silver instrument about that long (indicating), I ran it into the right ear up above the back part of his cranium up to the point of the middle of his head. Then, I brung it over on the left ear and carried it around and run it at the other point on the

left side of his head and I found all of this, the skin had left the skull and was just loose in there, just pieces. His skull, it had left the skin and was just pieces back there of his head. I could feel some movement of the bones of his skull. The bones were broken. The back of his head was broken, the skull was broken, his eyes were blood-shotten, both eyes were blood-shotten and his face was scarred up and he had a scar on his wrist. It was on his left wrist, I think it was. It was a fresh something, like he had just twisted his wrist, something, like that. It looked like something had twisted the skin of his wrist on his left wrist. It was a very small place. You could just tell that the first layer of skin had been rubbed off. I am not familiar with handcuffs. I wouldn't say this place was about the size or the width of handcuffs. I do not know the size of them. I have seen them. This mark on his left wrist that I have described was distinct. It went all the way around the wrist, just the first layer of the skin was rubbed off.

On his left leg there was a skinned place, and on his two chests here the skin was rubbed off, on his side the skin was rubbed some and his shoulders were rubbed and his face, his jaws were rubbed, under his chin, both jaws and also his forehead.

I was present when some photographs were made of the body. These are the four photographs that were taken of the body. All of these photographs were taken on the same table. You see we had cleaned him up then and had undressed him. These pants were just laid up on him. They were just laid on his legs to just protect the lower extremities; and this one is the same way only we turned him just a little bit. The man tried to get that ear. It is the same photograph, all four of them. All four of them are photographs of Bobby Hall taken in my establishment the morning I embalmed him.

The injuries on his chest, the skin rubbed off, I could see that before I washed him. You could see that blood and dirt. There were no other skinned places that showed up after washing him that you couldn't tell before washing him. You could discover all of them but, of course, you couldn't tell what they were, but you could tell the skin had slipped. Now, when he was washed, of course, all of these injuries were clearly visible.

(No cross examination.)

124. MR. ROYSE HINSON, 30th witness sworn in behalf of the Government, testified on

Direct Examination.

I am Roy Hinson. I am Dougherty County police officer. I was on the county police force in January of this year.

I went down to the Poteat Funeral Parlor here in Albany on or about the 30th of January of this year when there was a negro, Robert Hall, in there. I went down, I am not sure about the date but I went down on Sunday after this was supposed to have happened on either Friday night or Saturday morning. I saw him Sunday night.

As to why I went down there, I was patrolling and I rode down to the terminal station and there were a good many negroes gathered up together and they were crying on the sidewalk; so I just drove up and asked them what the trouble was and after that I went to the funeral parlor and found this body.

I looked at the body and made some examination of it. The body was lying on the table and it had been washed and had a sheet over it and Walter Poteat pulled the sheet back and I looked at his head and they were telling me

different stories about how it happened; so naturally I was interested in it. I looked at his head and his right forehead was bruised, his ears, the back of his head and on his right side had a bruised place about as wide as my three fingers, looked like the skin had been rubbed off and then part of his chest looked like sand burns.

His wrist had imprints. Of course, this body had been embalmed, wasn't any torn places on his wrist but it had a double mark imprints around his arm.

I have been an officer about a year and a half. I am familiar with handcuffs. These imprints were very close together and went around his arm, either arm, both arms had imprints but no broken skin on either arm.

Q. Well, would that be the kind of a mark that handcuffs would make?

Q. Will you just illustrate how handcuffs are used on individuals?

A. Well, an ordinary paid of handcuffs, as you see, has two ridges on the side, that is when you put it on, it works through this (illustrating with pair of handcuffs) and if a pair is put on and mashed down or either put on loosely, if the prisoner should waver, naturally it would leave a double imprint on his arm. Of course, I do not know whether they were handcuffs or not because I did not see them on him.

These marks that I saw on these two wrists were double imprints.

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MR. JAS. L. FAIRCLOTH, 31st witness sworn in behalf of Government, testified on

Direct Examination.

I am James L. Faircloth. I am a member of the police force here in Albany. I have been on the force two years

the 17th of this coming January. I was in service in January of this year.

I went down to Poteat's Funeral Home about the 30th of January and looked at the body of a negro named Bobby Hall. I examined that body, or looked at it and observed the injuries on it. I observed his wrists and there was some marks on his wrists. I couldn't say what put the marks there but on each wrist, there was a mark, looked like the wrist or arm had been corded. That was on each wrist.

I believe it was Saturday afternoon that I saw the body. It was after it had been embalmed. The imprint was still there. I looked at his head. The back of his head, right in the back of his head was crushed, the skin wasn't bursted but it was soft like cotton and along on the sides of his face, I saw—on the sides of his face and ears there were some scars and scratches on each side of his head. I said his head was soft. There was a couple of skinned places right on each side of his chest, I reckon, approximately the size of man's hand.

(No cross examination.)

127. MR. PRICE WESTBROOK, 32nd witness sworn in behalf of Government, testified on

Direct Examination.

I am Price Westbrook. I am a member of the police force here in Albany. About the 30th of January or sometime around that date this year I went down to the Poteat Funeral Home here and saw the body of Robert Hall or Bobby Hall. I looked at the body. I just looked at it and saw the injuries about his head, chest and shoulders, his stomach and arms.

I made some examination of his wrists. I looked at his wrists. His wrists was skinned up, both of them had marks on them. The marks were wide, looked like double marks on both wrists.

Cross Examination.

It was Sunday night some time during the night when I saw him. That must have been along about the first of February. I do not remember the date. I do not know when he was carried to the undertaking parlor though.

MR. J. D. WHITE, 33rd witness sworn in behalf of the Government, testified on

Direct Examination.

I am Mr. Dillard White. I live down in Baker County. I do not have any business in Newton now. I used to have one there. I clerked for Mr. Hall down there last year. I had a place of business there in January of this year. I slept there in the place of business at night, only when I was out at the farm.

I remember the night that Bobby Hall was beaten up down there on the Court-house square. I was in Newton that night at the place where I slept. The next morning about five o'clock I was up and Mr. Frank Jones and Mr. Jim Bob Kelley called me and asked me did I have a fire. I told him I did. He asked me who was in there with me and I told him a certain person and I asked him who was with him and he said his sweetheart. Mr. Jim Bob Kelley was doing the talking. I then opened the door and Mr. Jones came in with Mr. Bob.

Mr. Jones was in fair condition. I call it. Mr. Jim Bob had drank a little bit. I could tell he had been drinking. By

fair condition I mean that he knowed what he was doing and everything.

I noticed some blood on Mr. Jones' boots. I asked them where they had been and Mr. Kelley said they had a big frolic around there and I ought to have been around to it; and they talked on and said there had been a killing; I asked them who got killed and they said you will know in the morning.

I said they did bring some liquor in. They didn't say anything further to me about what had happened up there. There was no description of the party that they referred to. They didn't refer to anybody, never did tell who had been hurt.

There wasn't so much blood on Jones' boots. He did have on boots. Mr. Jones did not stay there very long. He said he had to go home. Mr. Bob stayed there some time and finally lay down on the cot and went to sleep and I made by preparations to go out to the farm and I woke him up. He asked me to give him my keys and let him stay there that he would give them to somebody after I come back but I told him I wouldn't be back until after dinner and I couldn't do it. So, he left and went outside. That was between 5:00 and 6:00 o'clock in the morning when they left. It was about five o'clock when they got there.

(No cross examination.)

129 MR. JAS. P. WILLINGHAM, 34th witness.
sworn in behalf of the Government, testified on

Direct Examination.

I am James P. Willingham. I am just out of the hospital. That is the reason I am on a stretcher. I am just

out of the hospital. I live across the river on the Radium Springs Road in Albany. I have lived at Newton. I think I was living there in January of this year.

I was in Newton about the time or right after Bobby Hall was killed down there. I stayed there, I imagine, two or three weeks after he was killed and moved on up here, might have been a little more but something like that.

I know Frank Jones, Jim Bob Kelley and Sheriff Claud Screws. The day following the killing of Bobby Hall, I had some conversation with Mr. Frank Jones. I talked with him a little while over in front of Johnny West's liquor store Saturday morning after the killing was on Friday night.

Me and Frank has always been mighty good friends and I asked him about the thing, how it happened and so on, and he told me that the negro had a mighty good pistol and they taken it away from him and the negro acted so damn smart and went before the Court in some way trying to make them give it back to him, tried to make him give the pistol back; you see, and went to Robert Culpepper from Camilla, and during the time he asked the Judge something about making them give him his pistol back; and that they went out there that night with a warrant and arrested him and handcuffed him and brought him to town and the negro put up some kind of a talk about wanting to give bond or something to that effect and they beat hell out of him; then, that when they got him up to the well they whipped him some more and he died shortly afterwards. He said the negro attempted to shoot them at the well; said the negro attempted to shoot them at the well with a shotgun and said he hit him with a blackjack. Frank said he hit him with a blackjack pretty hard and I asked him about how in the world did the negro try to shoot you and you had him handcuffed and he said well we finished him off and that is all. I didn't have nothing

to do with it and don't want to have anything to do with it.

He said that they beat him between Hall's house and town and they finished him off at the well. I asked him how come all that string of blood there through the sidewalk and he said that's where they drug him through the Courthouse and out through the men's toilet and out to the back.

I am sorry I can't talk loud enough for you fellows to hear me but I am nervous and I am kind-of weak and can't talk very loud. I said I asked him how come all that blood across there through the sidewalk. I said was he bleeding all that bad and he said they drug him all through the Courthouse and through the toilet and to the jail house. And so we left and I said, "Well, looks like you all done a pretty nice job." I do not know that he made any reply to that. This conversation took place in front of Johnny West's liquor store.

Newton, Georgia is in Baker County and Baker County is in the State of Georgia. I am familiar with the Phoebe Putney Memorial Hospital here in Albany, know where it is. It is in Dougherty County in the State of Georgia.

Cross Examination.

I do not remember the last time that Sheriff Screws arrested me and incarcerated me in jail but he has arrested me, I know. I do not remember when the last time was. I do not keep up with things like that. I do not keep up with the various arrests.

I haven't told anybody much what I have told here today. I hadn't told anybody about it until I came here today except I told the FBI men about it when they came to see me. They came to see me some few weeks after it happened. Those are the only people that I mentioned it

to. I haven't mentioned it to anybody besides them. I haven't mentioned it to anybody except them that I know of.

I got the impression from the blood that they did a pretty good job. From the way it looked, I think they did a good job.

131 MR. W. H. CRAWFORD, 35th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is W. H. Crawford. I am employed by the Federal Bureau of Investigation. I have been with them since March 4, 1940.

I was associated with Special Agent Marcus B. Calhoun in investigating this case. The second interview with Sheriff Screws was occasioned by the fact that we wanted to get the criminal docket of the Justice of the Peace. So, we went by the Sheriff's office and he turned over to us the criminal docket. We turned through the criminal docket with Sheriff Screws and asked him did he make any of the entries in the criminal docket.

I have here photographs of several pages in the docket, not the whole docket. The pages I have here show the entry of the Bobby Hall warrant. I asked the sheriff about who made the entries on this page. We asked him did he know who made them and he said no. We asked him did he make them and he said no. We got the warrant from the Sheriff on February 20th, the first day we were down there. On this second interview when we were asking him about the docket sheets, we asked him did he know who wrote the warrant and he said no, and we also asked him did he write it and he said no. He said he did not know.

We did not take specimens of handwriting from the sheriff on that occasion. We later interviewed the sheriff again and obtained from him handwriting specimens. I have here the original specimens that we took from the sheriff. There are six pages of specimens.

We took the warrant that the sheriff turned over to us, the original warrant and the photograph of these docket sheets and the specimens of handwriting that we took from Sheriff Screws and we transmitted those by United States mail to our Bureau in Washington, to the technical laboratory at Washington, D. C. and asked that examinations be conducted to determine if the handwriting of the questioned documents was the same as the handwriting on the known. We transmitted them to Washington and asked that an examination be made of them. We marked these exhibits before we sent them up and the marks are on them now. Later they came back into our possession from our Bureau in Washington with the same markings that we put on them.

The purpose of sending the documents, the warrant and the docket sheets and the original specimens of Sheriff Screws' handwriting to the laboratory was to determine if Sheriff Screws wrote the warrant and also to determine if he made the entries on the docket.

Q. Mr. Crawford, when photographs were taken of the docket sheets in the Justice of Peace's docket from where did you get that docket?

A. We got the docket from the Sheriff's office.

Q. Now, where did you leave the docket?

A. We left the docket after we got through with it with Judge Riley. In fact, we got Judge Riley's permission, Judge T. A. Riley the Justice of Peace, to obtain the docket from the Sheriff's office because he, as I understand it, is the legal custodian.

Q. And you delivered it to Judge Riley?

A. Yes, sir.

Cross Examination.

By Clint Hager:

Q. Judge Riley is Justice of Peace?

A. Yes.

Q. And you delivered it back to him?

A. Yes, sir.

Q. And left it in his possession when you left there?

A. Yes, sir.

134 MR. HUBERT L. DAVIS, 36th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Hubert L. Davis. I live at 320 S. Veitch Street, Arlington, Virginia. I am a Special Agent of the Federal Bureau of Investigation assigned to the examination of questioned documents. My headquarters are the FBI Laboratory, Washington, D. C. I have been employed by the Bureau over two and a half years. During this period of service with the FBI I have been assigned specifically to the examination of questioned documents, including handwriting, hand-printing, type-writing, printing, forgeries and altered documents. In that period of time I have examined thousands of specimens, including the types of examinations that I enumerated. That is my regular assignment in the Federal Bureau of Investigation, to examine documents, handwriting, etc.

I am a college graduate. I received my B. S. Degree from Western Kentucky State College at Bowling Green, and after graduation I worked for six and a half years as Assistant Cashier and bookkeeper of a national bank; and on receiving my appointment with the Bureau and assigned to the Document Section, I attended classes, lectures

and discussions pertinent to that type of work and worked with other examiners until I reached a degree of proficiency whereby I was granted permission to act on my own judgment.

In my work in the Bureau I make these examinations and act on my own responsibility. This document which purports to be a state warrant, handed me by the district attorney, came to me for examination. This was submitted to me in the laboratory for handwriting examination. These specimens of handwriting also came to me for examination. I marked all of them. I was requested to compare the handwriting appearing on the questioned warrant with the known handwriting to see if they were written, if I could reach a conclusion as to whether they were written by the same person.

I made some charts in my examination by using a photographic negative made the original size, the as-is size of the documents, the questioned warrant and the known handwriting, and that original negative was placed in an enlarger and enlarged on these charts approximately five times. I have some charts here that I made up in this comparison. These are my charts here and I shall now unfold just those charts on the warrant.

(Large handwriting charts exhibited to jury.)

The two charts hanging to the left, to the left of the jury, are known, are the known handwriting of the individual that I was asked to compare with the questioned warrant. Now, these two—I have three, one small chart—this is the upper portion of the warrant, being a large sheet of paper. It is not possible to make a chart or the chart would be unwieldy to have it all in one section. So, this is the top portion of the warrant and this is the bottom portion, and this is the five times enlargement of the

outside, of the handwriting appearing on the outside of the warrant.

I have in my mind, and am exhibiting to the jury the original warrant which was photographed. This portion, the first photograph is the photograph five times enlargement of the top portion above the double line on the warrant; and the next photograph is the photograph of the bottom portion of the warrant and the small one is photograph of the handwriting appearing on the back of the warrant, on the outside of the warrant.

In my comparison, I took into consideration those formations of letters or peculiar way of making letters which I think is characteristic of the individual's writing. This is the known specimens of the sheriff's handwriting that was sent to me from the Atlanta office for comparison with the handwriting on the warrant.

By way of explanation the red marks, the red arrows you see are extraneous markings which I have placed on there for my convenience in explanation. They are not a part of the original negative or the photograph. They were placed on there by me with a red pencil.

As I said, I took into consideration those peculiar formations or characteristics which I think are characteristic of the individual submitting the known specimens.

Taking the first word "Baker" at the top of the line "Baker County" you will note that in making the "B" the top loop or portion of the B is elongated and not a rounded stroke as usually made. You will find that characteristic on the known handwriting in the letter B, and here it is very comparable to the top portion of the B on the questioned warrant.

You will find that the individual in the middle of the word, instead of making the usual small "k" the way a small "k" is usually formed; he makes a capital "K", what is usually referred to as capital form of the letter "K". That same characteristic is found throughout the known handwriting. He makes a large capital size letter "K".

The next character, I think, is very characteristic of the individual, the ending letter "r". You will note that on the questioned document instead of making a well formed small letter "r", he more or less creates a hump in the line and finishes the stroke of the "r" with an outward sweep. That characteristic is found very pronounced and very comparable in the last word "Baker" and also in the second from the bottom of the known specimen.

Turning to the name "Bobby Hall" we find the same type of "B" and in the word "Hall" in the formation of the capital "H" we have what is referred to as a tick or the beginning upstroke of the "H"; and in lifting his pen and in proceeding to form the second step of the letter "H", it is noticed that the pen has not been lifted directly and there is a small tick appearing on the bottom of the capital letter "H". And also in forming the cross between the two steps of the letter "H" we find that he begins directly on the first staff and proceeds some distance past the second staff of the letter "H". Turning to the known handwriting we find in five letter H's those same characteristics which I have pointed out, with the exception of the beginning stroke on the first two. On the last three we have the characteristic beginning stroke and also the pen drag on the first staff of the letter "H" and also the extending of the cross-line beyond the second staff of the "H" in all instances.

The next characteristic which I point out is in the word "Steeling", the capital letter "S" formation and the distance between the upstroke and the down-stroke, and the angle create at the base of the small letter "t". You will note that there is quite a space appearing at the base of the "t" and the cross-line, the crossing of the lines in the place of the capital letter "S" in the word "Steeling" are somewhat close together and you might say jammed up to that point. Turning to the known handwriting we find

the small portion or small angle created at the crossing of the capital letter "S" as appearing here and the distance, formed by a long up-sweep forming the first staff of the small letter "t" and the downward stroke. Here it is very evident that he doesn't retrace, doesn't retrace on his downward stroke of the letter "t". That wide angle is very evident in the second word "Steeling", also the third and also the last.

Spelling of words if characteristic.

Stipulation.

Mr. Hager:

Mr. Crawford (FBI Agent) tells me that he did not exhibit the writing to the sheriff but asked him to write "stealing" and we will stipulate that. He further says that he had the warrant in his possession at that time or prior to the time.

(Direct Examination Continued.)

On the questioned warrant you will notice that the word "stealing" is spelled "steeling". On the known handwriting in the six instances that he has written the word "stealing", the word is spelled "s-t-e-e-l-i-n-g", as it is on the questioned warrant. In handwriting comparisons spelling of words as well as the formation of the letters is a significant characteristic.

Proceeding with the explanation of other characteristics, the peculiar formation of the letter "g", small letter "g" ending of the word "stealing", the individual makes a small loop and not a well formed loop at the top of the "g", and in some instances breaks the line of writing before forming the small letter "g". On the known handwriting we find the characteristics, small formations of

the small loop at the top of the small letter "g", and a sweep to the right and downward forming the tail of the "g"; and, as pointed out, there is a tendency of a break between the "n" and the "g". That break is noticed in three—four instances—three instances and a tendency in the first writing "steeling" in the first line of the writing "Steeling truck tire".

In the words "truck tire" the usual formation of the letter "t", the upstroke. The small letter "t" is made with an upright stroke and a retrace downward stroke. On the questioned warrant it is found that the individual does not make an up-stroke forming the small letter "t" but begins his line of writing at the top of the small letter and proceeds down and into an arc. That is exhibited in the beginning "t" of the word "truck" and beginning "t" of the word "tire". Also, I might point out that in this instance we have a pronounced or sharp angle at the bottom of the small letter "t" in the word "tire". Then turning to the known handwriting we find that the "t" is formed in the same manner beginning at the top and coming down with no tendency to make an upstroke beginning the small letter "t" and we have an indication of a sharp angle at the bottom of the small letter "t".

In the word "truck" there is a tendency of the writer of the questioned warrant to leave a break by lifting his pen after the small letter "u" and proceeding to the small letter "c". We find a break in the line of writing. On the known handwriting that is notice in five instances out of the six known writings of "truck", the break between the "u" and the small letter "c".

And again we have the characteristic formation of the large for the small letter "k", using capital formation of the letter "K". That is also noticed on the known handwriting.

The next characteristic which I pointed out is the word "of", small two-lettered word "of". You will notice that

the formation of the small letter "f" with the loops or indications of loops are not very pronounced and are retraces. The top portion is a retrace and a very small portion of elongated loop or formation of loop at the top of the letter "f". Turning to the known handwriting, the first letter, the first word "of", the letter "f" is formed in the same manner as in this instance: The top loop is a retrace and also the bottom is a retrace in the same manner as pointed out on the questioned warrant.

The large letter "F" in the word "Firestone" is characteristic and it is formed in unusual manner at the top in straight downward stroke, no indication of finishing the stroke. It is formed with straight diagonal stroke and the cross formed by the beginning of the upward forming the "i". That same formation of the letter "F", capital letter "F" is found in the word "Firestone" here. We have a straight downward stroke diagonally with the formation of the cross, being the beginning of the upward stroke going to the small letter "i".

In the word "make", I have pointed out two characteristics. The first is the break between the first letter "m" and the small letter "a", with the abrupt ending of the letter "m", the downward stroke to the line of writing approximately at the line of writing. And there is the "K" that I referred to previously, the formation of the capital style of "K". That same type of "m" with the abrupt ending and the break between the "m" and the "a" is found in four instances, with the exception here of the slight tick going to the "a", and the break occurs between the "m" and the "a" in all instances; and we have the characteristic formation of the capital letter "K".

The lower portion of the warrant, I think I can point these out rather hurriedly. The same wording as appears in the word "Baker", the same formation of the top portion of the letter "B" and the capital "K" formation and the slur formation, that is not a clear or good formation

of the small letter "r" as we notice on the known handwriting. That same "B" in the word "Bobby". And in the formation of the letter "H", as I pointed out previously on the other charts is the beginning tick to the first staff and the pen drag at the lower portion and the extension of the cross between the staffs, as we find it, as pointed out on the known handwriting. There is the tick, the pen drag and the extension as it appears here.

As I pointed out on the known, the angle, the width of the angle at the bottom, the base, of the small letter "t". The word is spelled in the same manner as appears on the known handwriting, "s-t-e-e-l-i-n-g". We have the formation of the "t", the base, we have the angle and the indication of a lift, indication of decrease in pressure between the "u" and the "c", the formation of the capital letter "K" there, the same "t". In the word "of" there is almost a retrace of the two loops of the "f" and the same capital "F" in the word "Firestone", the diagonal downstroke and the cross of the "F", formed with the upstroke of the small letter "i", as pointed out in the known handwriting.

This small chart refers to the name on the outside of the warrant. We have the formation at the top of the capital letter "B", very similar to the formation of the top of the capital letter "B" on the known writing, the similarity noted between the two B's in the formation of the double "b" is noticed between the known handwriting and the questioned writing on the warrant. Here again, we have the same formation of the capital letter "H", the tick or pen drag at the bottom of the first staff before formation of the second staff and the extension of the cross-line between the staffs. And another characteristic that I have marked is the distance or the length of the stroke between the small letter "a" and the formation of the first "l". It is very apparent in the fourth line of writing of Bobby Hall at the bottom of the known hand-

writing and that is noted in the formation between the "a" and the "l" of the writing appearing on the questioned warrant.

From this examination I reached the conclusion that the individual who prepared the known handwriting submitted to me for comparison with the questioned warrant was the same individual who wrote the portions of the warrant as I have pointed out, Baker, Bobb Hall, Steeling truck tire of Firestone make, and the top portion of the warrant. The words "Baker", "Bobb Hall" "Steeling truck tire of Firestone make" on the bottom portion of the warrant and the word or name "Bobb Hall" appearing on the outside of the warrant.

I did not reach a definite opinion as to the names George Durham and T. A. Riley as they were not sufficiently comparable to the known handwriting. They were not sufficiently comparable for me to reach any conclusion.

Cross Examination.

My name is Hubert L. Davis. I said I lived in Arlington, Virginia, which is kind of a suburb of Washington, D. C. My work is all in Washington. I am 33 years old. As to becoming a handwriting expert in 33 years, they are referred to some times as experts. I call myself an expert. I consider myself as having knowledge above the average layman. My principal experience before I went to the Bureau of Investigation was as a bank clerk, six and a half years in a national bank. Then I said they gave me quite a few lectures up at the FBI. I attended lectures for over a year, approximately a year and a half.

I have been out on my own where they were willing to trust me with my judgment for approximately a year, almost a year.

The FBI is one of the investigative bureaus of the government. It is the business of the FBI to swear out war-

rants in certain cases falling under their jurisdiction, white slave cases, motor vehicle theft, etc. I am familiar with warrants and the swearing out of warrants. I know you have to make an affidavit to begin the warrant and I know the warrant does not become a warrant until it is signed by the United States Commissioner. It is my understanding, though I am not familiar, that a state warrant does not become a warrant until it is signed by the Justice of the Peace.

I do not see any similarity between the "T" that is on here, that is the signature that made the warrant—I do not find any similarity in the ending of this "T" which comes down in perfectly straight mark, no curlicue, with those "T's" there. I do not see any similarity in the portion you have referred to. I do not see any similarity in the five I have here. Every one of the "T's" is at a distinct slant to the left and not the distinct curlicue at the bottom. And the "T" here on the signature of "T. A. Riley" comes down perfectly straight. And the first two T's in here the top covering the "T" comes out perfectly straight and perfectly level, and the third one also comes out perfectly straight; and on the "T" down here there is a downward stroke and then comes up distinctly with the end of it ending rather light.

Those differences counsel points out, there are differences that are noted in my examination which led to no conclusion on my part as to whether they were written by this individual or not. I did not state that if I found similarities I reached a conclusion but if I did not find similarities or rather if I found dissimilarities that I did not reach any conclusion. If you find definite similarities that show formations of letters and characteristics, as I have referred to on my charts, and you find those characteristics existing in the number that I have pointed out, the questioned in comparison with the known writing,

you reach conclusion that they were written by the same person.

I notice no similarities that would point to identity in comparing the "T" in the signature of "T. A. Riley" with the "T" that is on there. So, the "T" is out. The only significant similarity I see between the "A's" in T. A. Riley is the angle at the base of the small letter "a". I pointed it out in the first one up here and the angle in the bottom one is right here, we have a formation. I would not say that the same person who made this "A" made that "A". I would not say that they were written by the same person. I stated that from my examination I did not reach a definite conclusion. I cannot reach a definite conclusion now. My conclusion is as it was. I won't say that the same person that wrote this "A" wrote that one. I won't express any opinion about it. I won't say that he did not do it.

The letter "R" is, as pointed out by counsel, made by first starting about half-way up the line with a down-stroke and leaving a distinct loop with lots of daylight to be seen through it, comes on up here and comes back to the original down stroke and makes quite a loop there showing daylight and then comes back down even with the starting stroke. The "R" on the right-hand part of the loop has a very sharp angle on each of those. I see those on the known handwriting. I wouldn't say they were more distinct than the angle on the "A" that I called attention to. The angle on this "R" is not as pronounced. There is no definite formation of an angle at the top of the "R". The first one here has quite a bit of daylight right there. There is not as much daylight between the down loop and the upper loop right in there. Here is a slight indication. Right here is some daylight. I think that is some but it is not as pronounced as it is over here, as counsel pointed out.

I call the starting of each one of these R's, the little tip there I call a tick or beginning stroke. The beginning stroke or the tick starts there at the left and comes up before starting the down-stroke on each one of those. There is no indication of the same parallel stroke there.

I did not measure the length of the dash over the "i" on the enlarged copy. I noted that. I wouldn't say this was exactly round. It is more of a dot than these appearing here on the known. I do not see any similarity at all between that "i" and this "i". Every one of these "i's" have a slant to the right and this one is almost perpendicular, and on these i's there is a distinct v and an angle under each one of the i's on the up and down stroke. There is not a definite formation of an angle over there, not the definite formation of angle over there that there is here. I do not see any similar characteristic between those two "i's" or anything to base a conclusion on. I based my conclusions on the characteristics that were written down here. The formation of 26 letters into words is what I based my conclusion on.

One of the characteristics that I referred to was the spacing of the letters, one letter to another. There is quite a space between the "l" and the "e" in Riley. This line here is a little longer than usually formed. I said that this line here separating the "l" and the "e" is a little bit longer than usual. On this one it is very close and it is not as pronounced.

A fellow's spelling is also considered a characteristic. T. A. Riley here is not spelled the same as Riley on the warrant.

As I stated before, in my examination I reached no conclusion as to whether the same man wrote the T. A. Rileys. Even with all those dissimilarities I reached no conclusion. I cannot reach one now after having them pointed out to me. I cannot reach a definite conclusion now for the reason that in the writing of the word or the name "T.

A. Riley", as you can note, there are certain irregularities in the formation of the letters. In the word "Riley" we have an unevenness noted, in the formation of the line quality is what I am referring to; and the unevenness of the "l", the top here. It is noted that the line quality is uneven; irregular and at the bottom of the "R" or the formation of the top of the "y" it is possible that the writer could have stopped or halted for some reason or other, and those halts or irregularities in line quality, noted in this capital letter "R", are characteristics of forgery; and I took that into consideration in my examination; and, therefore, I did not reach any conclusion.

For the same reasons I did not reach a definite conclusion as to whether the person that wrote George Durham wrote either the word T. A. Riley or any of this questioned document. It is noted that the capital letter "G" and the small letter "e" in the formation of the letters there seemed to be a pause or not written regularly. There could have been a pause where the ink ran out on the paper where he could have been copying another signature as in the case of forgery. I do not say there is any forgery here. I do not say that the ink ran out. I do not say there was any pause. I say that from the indication of the writing on the paper there are indications of things that point to me the possibility of forgeries. Therefore, I could not reach a definite conclusion. All I say is there is a possibility. By possibilities I meant those instances appearing on the paper that indicate unevenness of line, irregular line quality and pauses or stops or indications. That is what I meant by that.

The amount of schooling that a fellow has had has something to do with his handwriting. Every individual writes differently from others. If they write with spencerian pen or stub pen it makes a difference in the formation of letters but still each person has his own char-

acteristic way of forming letters and it can be noted whether he writes with stubb pen.

The letter "B" was the first one I pointed out similarities in. I took up the word "Hall" in the known handwriting and the disputed handwriting about second or third. Hall over there is at the bottom of the chart. On the disputed handwriting there is a tick at the top of the letter "H", starting below the height of the letter it takes an upward turn and comes down at a left degree angle and then an upward tick here at the end of it. I think I pointed out on the first specimen of handwriting where there is a tick either at the top or the bottom. The tick does not appear in the first two. I think I said in three instances that it did appear. In my testimony I picked out those letters where I found a similarity but I did not point out directly any dissimilarities. I don't remember whether I pointed them out directly or indirectly.

As counsel points out in the word "Steeling", the first letter "S" starts about the middle of the line and goes down at a left-hand angle and then comes back sharply to the right forming two square angles before it starts on the upturn. I see the two angles counsel refers to, that angle there and this angle right here. These "S's" do not have this beginning stroke, as counsel referred to right here. You have got to have another line and make another line. I said the line is not there, the angle is not there. This angle right here is not there but this angle down here is very definitely formed right here, comparable, I think, to the one on the questioned warrant. The formation of the capital letter "S", in my opinion, is very similar. There is a sharp retrace in the top of this "S" and the "S's" here all have a big loop in them with no sharp angle at the top. There is no angle on any of them comparable to this "S". That is not a dissimilarity. It is not a similarity that points to non-identity. As I originally pointed out in the writing on the specimen and the warrant, the writing

in between the lines is smaller than the lines appearing on the known handwriting, I think. The writing would be smaller and would tend to bring in variations in sizes of the letters; if the writing was restricted in any way or within certain points, the formation of the letters would be affected.

I would not say that the top of that "S" is similar to the top of any one of the known handwriting "S's", the top of it, which is a dissimilarity in formation but it does not point to non-identity. It is not made in the same way. And the starting point with the angle at the bottom that is a dissimilarity in form.

The fact that the lines are not the same can be explained by the fact that this writing and this writing and this writing are three separate sheets of paper and they are placed on the photographic negative or the picture is made so as to include all three sheets on one negative. After measuring those two I would say that those lines are approximately the same as these over here, so there is not any difference in the line. The difference in the formation of the letter "S", I can't say, is because of the lining on the paper particularly.

In the letter "g" in "Steeling", after he finishes the loop of the "g" at the top similar to a small "a", he slants back to the left and doesn't again cross the line, comes down here and comes back up here at an angle. It does that, as counsel says, in that formation. There is no formation over here where there is a "v" left as pronounced as it is over here in this "G". That is dissimilarity in form or a variation in handwriting, a natural variation.

My opinion is based on those formations which tend to point to identity; the characteristics in the top portion of the letter "g" and the break, as I referred to, are characteristics which are more significant, in my opinion, than the upstroke of the tail of the "g". There is a formation of a loop there in the "g". There is some daylight

through it. I see a trace of a light. In my opinion the formation of the top of the "y" is very similar in all instances. In fact, the formation of the loop of the "y", as I pointed out, the distance of the stroke forming the other part of the formation of the staff of the "y" are very similar, the distance.

To some extent one of the things I base my opinion on is the apparent weight that is put on the pen, that is whether it is bold writing or thin writing. In the words "Steeling truck tire of Firestone make" I see a difference in the writing, the width of the writing but that can be not only attributed to the weight or the pressure of the pen but could be attributed to the pen used in making the writing. This could have been a fine point pen. From my examination, I would say that the point of this pen is a finer point pen than the known handwriting. If you take a fine pen point, a fine point pen and make enough pressure on it, it will make heavier writing but you will have definite traces of pen nibs or where pen nibs run into the paper. I do not see any indication of where real heavy pressure has been placed here, that is along the line of writing. Regardless of what may have caused it, I do see a difference in the boldness of this handwriting and this known handwriting. There is a difference in the width of the line of writing. It could be due to the writing instrument used.

There is a definite drag or break, I mean, between the "u" and the "c" in "truck". I think there is a definite break. In this one there is no break at all. The difference between this, and the five known specimens is a natural variation. In all but one instance the break does appear in the known handwriting. I believe I referred to that in my direct testimony. There is no break in this one of the known specimens. In this one there is a pronounced break. In this one the break is just as pro-

nounced, if not more than over here. I wouldn't say but there is a definite break there in both instances.

Turning over here to "Firestone" and comparing the "F's", there is a variation in the third one here but not a definite difference. I would call that a variation, a natural variation. It is not made in the same formation; the loop is not there. There is no loop over there on that one but in three instances out of the five there is no loop, as you pointed out on the questioned warrant.

On this questioned document over here where the "F" is crossed at the top and at the right-hand side there is a distinct tick on there. I see the tick. That is a pen drag or tick and that could be a characteristic. On the five known specimens there it does not appear but again I can say that that could be a natural variation. It could have been written by an entirely different person or it could have been that the pen at this point could have stuck into the paper. That is a possibility that I could not explain whether it stuck there. I just don't know. I can't explain every mark or tick as it appears here as to whether it is a definite trace or a tendency but the formation of the letters, the uniform formation of the letters, is very similar. Some formations of the letter "F" look alike and some do not. Every person has his characteristic way of forming the letters.

In the word "make" it starts out to the left in the letter "m" with an upstroke which is lighter, which could mean that whoever made that or wrote that upstroke, that it was characteristic of them that they made a line coming up. They did in that instance there, doesn't seem to be as much pressure. The line is heavier on the downstroke. The upstroke there is lighter and the last one is very much lighter. It is lighter than the down-stroke. The upstroke on the known writing is not as pronounced. I would say this line right here is of lighter pressure than

this line or this line. There is an indication to me there that it is slightly lighter.

The fourth word "make" of the known writing does not have the formation of the questioned but again we have four other "m's" that do start in the same manner as the "m" on the questioned warrant.

In the word "Hall" there is an angle there at the top of the first down-stroke and the two, the first two of the known specimens have no angle whatsoever. There is a very distinct tick at the bottom of this letter "H" on the down stroke. I referred to that tick. On the first known specimen here there is a slight tendency of a definite trace of a tick. There is a tendency there to make a tick. There is a trace there. In all instances of this known there is a tendency to trace and in three or four instances I would say it is prominent.

In the word "Hall" on the disputed specimen there is a wide space here between the letter "a" and "ll". That is one of the things I pointed out. I would say on the known specimens that this spacing and that spacing and this spacing and the one I pointed out are definitely comparable to the distance in the word Hall on the questioned warrant.

This handwriting business after you look at it and study and enlarge it and you see some similarity and see some dissimilarity is a matter of opinion.

Re-Direct Examination.

These photographs of docket entries handed me are of pages 1, 75, 76 and 77. I received photographic negatives from which these were prepared.

Q. I mean did you receive that in the same manner and at the same time you received the other?

A. Yes.

- I made some charts on those four docket sheets as I did on the warrant, etc. I can leave the other charts up and use these by suspending them right on.

These are the same known specimens we had here awhile ago and I am using these known specimens now in comparison with these docket entries. I shall now explain, as I did awhile ago, to the jury what comparisons I made to determine whether the writer of these known specimens also wrote the docket entries, the four pages of docket entries.

In my comparison I compared the T. A. Riley signature on the upper half, upper portion of page 1 of the docket, with the known handwriting of the individual who submitted the specimens. That is docket sheet No. 1.

Q. All right now, I hand you the original document, state whether or not that is the T. A. Riley signature that you are fixing to talk about?

A. The signature appearing on the chart is a five times, approximately five times enlargement.

Q. I know but is that the same signature?

A. It is this signature appearing at the top.

The first characteristic that I want to point out is the loop or top portion formation of the capital letter "T" and the straight horizontal line at the top of the capital letter "T" and also the upstroke or curling up of the bottom portion of the staff of the "T".

The characteristics appearing on the known specimens, I pointed out: the loop, formation of the loop and the horizontal stroke to the right forming the "T" crossing and the curling or upward stroke at the base of the capital letter "T" is noted. And that is noted in every instance with the exception of three instances where there is a slight tendency in the known, which is a natural variation, of not exactly a horizontal line. I might point out that

in writing a person never makes a copiable, a copy that is that can be superimposed over another writing. There is a variation.

No one person ever writes exactly the same or identically the same at any time but there are characteristic formation of letters. Whether a person was educated or uneducated would have nothing to do with the characteristics, as the characteristics are evidence in a person of considerable education as they are in a person that is illiterate.

The next characteristic is the placing of the period or dots between the letters "T" and "A". The second one after the "A" is very pronounced downward stroke and isn't a pen jab or a dot directly on the paper. The stroke is made by forming a short line there. That is not so pronounced in the first one. The tendency is there. It is elongated. That same tendency is there evident and may be seen in numerous instances, after the "T" and, in fact, after all of the "T's" and there is not a definite dot there but there is more or less of an elongated stroke made there with the pen to form the period or the dot after the capital letters.

In the word "Riley", the capital letter "R", the beginning stroke of the letter "R", there is a tick. There is a period on the capital letter "H" made in the same manner, that is with reference to the presence of the tick on the downward staff forming the capital letter "R" and also the top of the letter "R" the formation is comparable to the elongated loop that I pointed out with reference to the capital letter "B" in the word "Boh". That formation or tick is noticed in every instance on the known handwriting of the capital letter "R" in the word "Riley" and also the top portions of the loop, and the formation of the loops are comparable as I pointed out about the top portion of the "R", not a rounded stroke but it has an

angle-like in every instance, as it appears on the questioned page 1 of the warrant.

The small letter "y" is characteristic and the top portion is similar, particularly the angle of the downward stroke forming the tail of the "y" below the line of writing. The angle is somewhat of a 45-degree angle downward.

I believe I was pointing out the angle in the formation of the tail of the "y" in the name "Riley". That same angle formation of the tail of the small letter "y", as found in the known handwriting, is approximately the same angle with reference to the margin of the paper. It will be noted, however, that the uptrace, upstroke, is made on the tail of the "y", whereas it does not appear on the known. I believe he does make a downward stroke with no uptrace in other instances which I will explain.

Referring to the signature on the lower half, this is a five-times enlargement of the lower half of page 1. We find the same characteristics existing in the name T. A. Riley, which I pointed out on the previous upper portion of the page and also in the known handwriting. We have the formation of the loop, the upstroke, the bottom portion of the capital letter "T", the same strokes forming the periods or dots between the capitals as they appear over here; formation of the letter "R", the same elongated loop at the top of the letter "R", and here we have the dot over the "i" in the word "Riley", a thin stroke to the right, approximately on this chart of half an inch or more.

Referring to the signature or the spelling of the name Riley on the known handwriting we have the same appearance of the stroke to the right. Instead of a period or dotting of the "i", in all instances that appears in the known handwriting as it appears here. It appears here and here it does not appear. He doesn't make any dot over that at all. It appears here and here it appears. The same angle downward of the tail of the "y" as was found on the known handwriting.

In the examination of the signature or the spelling of the name "M. C. Screws" appearing on page 1 of the lower half of the docket entry, we have the tick or beginning stroke on the capital letter "M". I have referred to that previously and also the abrupt ending in the capital letter "M". There is no tendency for the uptrace to finish the stroke of the "M". That characteristic is also noted in the known handwriting, capital letter "M", the beginning tick or upstroke and the abrupt ending.

In the formation of the capital "C" there is a simple or small loop at the top of the capital letter "C" and on the known handwriting we find the formation of the capital letter "C"—or pardon me, small letter "c" in all three of the signatures on this page of the known handwriting and the three signatures appearing on the second page of the known handwriting.

In the formation of the capital letter "S", in this particular instance we have no formation of the loop. It is more or an angle, a down-stroke and an upward stroke forming an angle at the base of the capital letter "S". That same characteristic is very evident in the known signature of this individual, in that there is no definite indication to form a loop or a circle and at the bottom of the capital letter "S" the downward stroke and upward stroke forming an angle.

The small "r" in the word, in the name Screws, is characteristic in that the top portion of the small letter "r" is rather elongated or a longer stroke to the right than is usually the manner in the making of the small letter "r". That is very evident in this signature and very pronounced in the signature at the bottom of the page, the length of the stroke to the right of the small letter "r". That is evident in all instances of the known.

That finishes with page 1 of the docket, all but this characteristic on the "w", small "w". The formation of the ending stroke of the small letter "w", instead of at

the top where he leaves the top of the small letter "w" and goes to the right to form the letter "s", is retrace of line, apparently has the appearance of an "i" and has a dot over it. That characteristic is noticed in the same manner in the known handwriting of this individual, has a dot over it that would pass for a dot over an "i". The usual manner is to finish over and then form the letter "s" instead of the retrace.

At the end of the signature it is noticed that the writer has made a dash with his pen about an inch long on the chart. That characteristic is also noted in the known handwriting very pronounced in this instance, this instance. He has omitted it in this instance but there is a definite stroke to the right appearing in this signature and the other two instances it appears very definitely.

Turning from page 1 of the docket we turn to page 75. In the interest of time the same general characteristics appear on an examination of the docket page 75 that I have enumerated. On page 75 we have the same characteristics and in the spelling of the name "T. A. Riley". Going to page 76, my examination and comparison of page 76 of the docket shows that it has the same general characteristics that I have described, the same general characteristics. Going now to page 77, the top portion of the page. The top portion of page 77 has the same general characteristics. This is the lower portion of page 77.

This lower portion of page 77, relates to Bobby Hall. I pointed out, I believe, in the signature "T. A. Riley", it could be noted that we have the formation of the loop, the upstroke of the "T", the "R" the same characteristics as is noted over here. This docket entry shows "Date of issue, 29th day of January, 1943." It also shows "Offense—charged—Stealing truck tire." The name of the prosecutor is shown as "George Durham."

In comparing the "offense charged—steeling truck tire" with the writing appearing on the known specimens, it will be noted that the spelling is similar, spelled in the same manner, "s-t-e-e-l-i-n-g" as was pointed out previously in all instances on the known. And we have the "g" formation, formation of the "g", not a closed circle at the top above the line of writing. That was pointed out previously on the known handwriting of the small letter "g".

And the name "Bobb Hall" the same type formation of the loop of the capital letter "B" and the "H". That has been described. We have the tick or beginning upstroke of the staff of the "B", the pen drag or retrace upstroke going to form the other staff in the letter "H"; and also the cross line; and here the distance between the small letter "a" and the first small letter "l" is pronounced, as has been pointed out previously in the known handwriting of the individual. "Steeling truck tire", in "truck" in this instance we have the break between the "u" and the "c", a break between the line of writing; the capital letter "K" and the "T" with no upstroke or beginning stroke to the small letter "T", in both instances at the top of the letter and not at the beginning of the bottom of the line of writing. That characteristic has been pointed out previously on the known handwriting, the break between the "u" and the "c" and the beginning of the "t" at the top instead of at the line of writing with the initial upstroke, the capital letter "K" at the end. That completes them.

From my examination and comparison of the known handwriting of Sheriff Screws there with the handwriting on pages 1, 75 and 76, that in my opinion—I reached the conclusion that the person who wrote the known handwriting as is exhibited in these charts on the left wrote the "T. A. Riley" signature on the upper portion, the upper half of page 1 of the docket; the T. A. Riley and M. C. Screws signature appearing on page 1 of the lower half

of the docket; the T. A. Riley name, page 75 on the lower half; the T. A. Riley name, page 76 and the writing on page 77; upper and lower half, T. A. Riley, Bobb Hall and "stealing truck tire".

On this last one I did not reach a conclusion about the George Durham signature. It was not compared because I had no signature. I had no known signature to compare it with.

There are no two pieces of writing by the same person that are absolutely identical. They could not be superimposed in all respects, placing one over the other. There is a natural variation in signatures that are written thousands of times. Every time you write your signature it will be different. There will be a slight difference. There will be a difference. There will be a variation in the line of writing. All individuals have distinct handwriting characteristics. The conclusion is not based on the "B" or the "S" or the "M" or the "R" or the "W" or the "T" or any portion of those letters taken individually. The combination or the accumulation of those characteristics as they appear on the known writing as compared with the characteristics appearing in the questioned writing are considered and compared together as a whole. That is how you reach your conclusion and that is how I reached my conclusion in this case.

Re-Cross Examination.

Q. In making your comparison if you find more elements of dissimilarity than you do of similarity what conclusion do you reach?

A. If there is evidence, if there is characteristic evidence of dissimilarity, the conclusion is non-identity.

I testified about portions of pages 1, 75, 76 and 77. On page 6 of the Justice of Peace's docket, involving the state versus John Jackson and the State v. Frank Carter, the "T.

A. Riley", the "M. C. Screws" on the top portion of page 6 and the "T. A. Riley" after the line "Warrant issued by" appear similar and could have been written by the individual who wrote on pages 1, 75, 76 and 77.

On page 18, in the case of The State v. Cleo Ferguson for hog stealing the writing there, in my opinion, is similar to the writing I testified about on pages 1, 75, 76 and 77.

On page 56 I cannot make the statement that the writing there, aside from the signature, is similar to the writing that I have identified or testified about on pages 1, 75, 76 and 77 because I have no comparable known writing to compare with these words. I can't make a statement as to that. As I said, the writing on pages 6 and 19 could have been written by the same individual as the other. On page 56 there are less indications, just as a curbstone opinion, that the same person did the writing. Counsel understands that this is merely a statement of opinion and it is not an examination.

On page 57, case against J. C. Carter for a misdemeanor, I can't make a statement about because I have no word "misdemeanor" in the known handwriting with which to compare it. The number of letters would not have anything to do with it and the same letters, wouldn't help. You have got to have the formation of the letters in the words of like spelling and manner to make a comparison. The characteristics of one letter as set out in the middle of a word may be different in a different word. They are not comparable to begin with.

The writing on page 82 appears as if it could have been written by the individual who wrote 75, 76 and 77. There are similar characteristics present in the signature there of M. C. Screws as the one I have testified about.

On page 83, cases of the State versus Sam Jones and John Wesley Davis, the characteristics appearing in the "T. A. Riley" on the top portion and "T. A. Riley" on the

bottom portion and the characteristics in the M. C. Screws signature could have been written by the person who wrote the known handwriting.

The characteristics in the "T. A. Riley" signatures in the two cases on page 84 are similar to the handwriting on pages 1, 75, 76 and 77 that I have described.

On page 85, the State v. Louise Jackson, the handwriting on that page, in my opinion, is not the same as the handwriting on pages 1, 75, 76 and 77. There are different characteristics in the "T. A. Riley" signature. There are different characteristics present.

161 MR. OTHA M. SANDERS, 37th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Otha M. Sanders. I live at 307 Carroll Street, Albany, Georgia. My business is that of a photographer. I have been a photographer since March 8, 1930.

I made some photographs down at Newton this morning. Mr. Crawford, FBI Agent, was with me when I made them and the other gentleman over there, Mr. Calhoun, FBI Agent.

This photograph, designated No. 1, I made this morning is a general view shot from the post office side of Mrs. Jernigan's house, front porch, from the side of the porch closest to the post office. You can tell by that arch right there I was standing right on the edge of the porch.

This photograph now exhibited me is a photograph made from the front window on the jail-house side of Mr. Ellis' house at Newton, the front window next to the jail. I did not take it from the inside of the room but from just outside of the window. That window was shown me. We

just agreed to shoot it from there, Mr. Calhoun, Mr. Ellis and one of his girls was present, I do not remember which one. I wouldn't know either one of them by their name if they were called. This is not looking towards the jail but it is looking towards the back of the Courthouse there. You see, the jail is sitting right over here (indicating on photograph).

Here is another photograph shot from the porch of Mrs. Jernigan's house, from the other side of the porch. You see I shot one from one side and one from the other and this is the one from the side down towards the warehouses on the other side, on the opposite side. It is the side farthest from the post office. That is from the Jernigan home, from the front porch of the Jernigan home.

Here is another photograph made from the center of the porch or the doorway of the house of Mrs. Jernigan at Newton, made from the center where you walk out on the steps or the doorway, you might say. This is looking towards the well, the artesian well at Newton.

Here is another photograph shot from the steps of Mr. Ledbetter's or I believe it is a hotel, standing on the front steps shooting towards the well. That was taken this morning. This car was placed at the well this morning. The man standing by it out there is not Mr. Crawford but the other gentleman, Mr. Calhoun; and this lady is unidentified. She was just walking by. And this is from the Ledbetter front porch or the steps.

Here is another photograph made from the rear window from the back window of the Ellis home. There were two windows we shot and that was made in the presence of Miss Ellis and Mr. Ellis, looking toward the jail, sir; and this takes up along here where that other one leaves off. This building over to the left is the jail, to the left of that photograph.

Here is another photograph made in front of a window on the porch of Mr. Ledbetter's home at Newton. They

have a lot of vines up there and there are holes in the vines and I put the camera right up there and shot one. There are leaves on that vine that screens the porch in. I mean I shot this view from behind the vines. That is looking in the direction of the well.

This is another photograph made from the porch in almost the same position as the first without the car being placed. The man at the well is unidentified. That one is taken from the front steps of the Ledbetter home and there were no vines over where I was standing at that time. This was made from the steps. I was standing on the steps when I made that one.

This photograph is a shot from the same place as the others through the vines without the car being placed or before the car was placed there. It was shot behind the vines and on the porch in front of the windows.

These pictures were made this morning, I will say, at 7:30. I did not get the exact time. When I was standing on Mr. Ledbetter's house I was facing the sun directly and the sun was just high enough to give me trouble with the camera. That's the reason they are so dim.

This picture was made from the porch, the Ledbetter porch and the reason it is so foggy is because the sun was shining directly in the camera. That's the reason that picture is not as clear as the others.

There is a city light near the Ledbetter home on a pole. You can see a light there. It is not right outside of the house. It is out in front. It shows distinctly on the photograph across the street on the Courthouse lawn. It is across the street from the Ledbetter's to this light and I would say it was 60 or 75 feet. I measured the distance from the ground up to the light on that pole with my camera. It was about 18 feet with that particular light. The other one through the range finder—we have an automatic range finder—the other one says about 3 feet higher or 21 feet on the one in front of the post office. The light

I am talking about is another light. I measured two of them. The one in front of the hotel or where the Ledbetter's lived was about 18 feet high and the light over there next to the post office was 21 feet high from the ground up on a pole. The one in front of the post office is hung on a wire. It is hung on a wire from two poles and swung in the middle.

I developed these pictures and they are correct impressions of what I took down there this morning:

Cross Examination:

I said that this photograph identified as No. 6 was taken was behind the vines of the Ledbetter hotel porch. I was behind the vines. I was behind the vines as if I was standing there looking out with my eye. How far do you ordinarily stand behind vines to look out? I was right at the vines. I did not have the lens of my camera projecting through any particular hole in the vines, only right in front of the window. I did not have the camera through the vines. If it had been through, these leaves on here would not have shown. That shows the camera didn't go through. There were several places I could just walk up and see through. It was not any particular one.

If I had stood back near the wall, I would have gotten a photograph but not that distinct.

I was standing within a foot of the same place when I made photograph identified as photograph No. 5. I tried to get the same place. I tried to get at the same identical place. The difference in the photographs is there is a car parked in that one and there is not one in this one. That is the only difference in these two photographs, a car parked in one and there is no car parked in the other.

I was present and my camera was used one day last week when Mr. Lester Rogers took some pictures down there at Newton. I remember those pictures. I saw the

angles from where they were taken. I would know those photographs now if I were to see them.

This is a true portrayal of the Ellis home from the angle it is shot. This is a picture that was made—Now, the instructions, I believe, was to make a picture on the door-steps on the ground and every 20 feet to the jail house door, and this is one just before the last picture was shot, the best I can remember. This one shows near the jail. This one is near the jail. This photograph is a true portrayal of the Ellis home at the distance of some 20 feet from the jail-house steps. (Identified Defendant's Exhibit No. 1.)

This picture handed me is the third picture, I believe, that was shot, from about 20 feet from the Court-house steps proceeding toward the jail; and Mr. Rogers was standing on the walkway from the jail-house door. They have a paved walkway there, I believe, that is going out of the rear of the Court-house toward the jail. That is before you reach the coping out on the Court-house yard. There is part of the coping here that shows in the picture.

This is a true portrayal of the porch of the Ledbetter Hotel as it was and is this morning.

This is a picture made from in front of somebody's service station there or close to the Suwanee Store and cutting across at an angle to the Court-house square. Here is the coping and there is the jail. Here is the corner of the Ellis home right there and here is the Court-house over here. That would be toward Milford but not the Milford road. It is west of the jail house and the Ellis home.

This photograph was made right in front of the Ellis home shooting by the Courthouse across the Courthouse lawn at the jew store. Now, I am not good on directions but it is directly in front of the Ellis home. Looking out toward the Suwanee Store the artesian well is around the corner here. It is around the corner of this building from

where this picture was made. It is around the corner there but in front of the Courthouse outside of the coping.

I would say it is about 50 feet from the Courthouse steps to the well.

This picture is a shot made close to the well shooting across as far as Joe White's filling station. With reference to that picture the Ellis home would be directly in this position here, back behind the Court house. (Defendant's Exhibit No. 6.)

This picture portrays the same shot showing three houses in accordance with the position of the well. Now, this is the Jernigan home and there is the post office and I don't know whose place that is there but here is the well. I do not know whose home this is right next to the post office.

This picture was taken from almost in front of the Ellis home but a little back towards the sign post to show part of the Ellis home and the position of the jail. (Defendant's Exhibit No. 8.)

This is a picture of the Courthouse showing the position of the well. It was shot from a load of peanuts parked up at Joe White's service station. And this is the center of the two highways, one highway 37 going east and west and highway No. 91 going north and south. I was not doing the shooting. I was observing Mr. Rogers while he was doing the shooting of the pictures.

This picture was made another step nearer to the jail than picture No. 1 was. I mean this picture was taken 20 steps nearer the jail than picture No. 1. This is picture No. 10 (Defendant's Exhibit No. 10).

This picture portrays the Ellis home. If I had them in a series I could tell as they come along. This is the first picture that was made on the Courthouse steps. You can tell by the elevation of the grade, being up. You see the difference. That is made from the Courthouse steps. That is the back Courthouse steps going toward the jail, the first

picture we made—No, that is the first picture Mr. Rogers made. This picture was made immediately after you step off of the last step. Picture No. 12 was made immediately after you step off the last step of the Courthouse going toward the jail. It was made on that little old paved walkway. There is one of those others that comes in before this one. That was right after we got out of the coping looking toward the Ellis home. I believe this is the picture we made just before the first one. That is the one Mr. Short handed me a few minutes ago. Some of them have gone ahead. This one was not made inside of the coping. That was outside of the coping between the coping and the jail, somewhere between them. This picture No. 14 was made outside of the coping too on the way to the jail.

Re-Direct Examination.

On the photographs that Mr. Short just exhibited to me the angles or the spots from which the photographs were to be taken were selected by Mr. Rogers along with Mr. Screws. Both of them were there and they made the pictures and I followed along behind them. Mr. Rogers made the pictures from the angles he wanted them. I do not know that he made them from the angles Mr. Screws wanted them made.

Mr. Rogers referred to is Mr. Lester Rogers. He runs a peanut warehouse at Newton. He has been with a newspaper and he is a good photographer. He is a photographer. He doesn't follow it for a profession.

These views were shot from angles selected by Rogers or Screws. They chose their own angle. These pictures Mr. Short exhibited to me were made one day last week.

This picture showing the vines there in front of the hotel or the Ledbetter home was shot from the other side of the well looking towards the Ledbetter home, showing a view of the home, shooting towards the Ledbetter home. They

did not shoot a picture from behind the vines toward the well. They did not shoot one from the steps of the hotel or the Ledbetter home looking toward the well.

There was no effort made to take a picture from the Ellis home looking toward the jail or from the window of the Ellis home looking toward the jail, the window next to the jail. There was no effort made to take a picture looking from the Jernigan home looking toward the well.

Re-Cross Examination.

As to who chose the spots from which I was to take these photographs for the government, I chose some of them to show what they asked to be shown. The gentlemen from the FBI they said they wanted to see the well, see if they could see the well. So, I got so we could see what they wanted, where we could see or not see the well at those spots.

Q. And at each spot that they said they wanted to see the well, you could see it?

A. No, sir, you could see it but it will not show in the photograph, sir.

Re-Direct Examination.

I resorted to straight photography in taking the pictures of the well from Ledbetter's hotel and from the steps. There was no trickery about that. You can't trick with that camera, sir.

169 MR. A. B. LEDBETTER, 15th Government witness sworn; recalled, testified further on

Re-Direct Examination.

I am the witness who testified here yesterday. I was at my home this morning when some pictures were made

down there. Government's picture No. 9 was taken from the hotel where I live. It is taken from the front porch of the hotel through the vines there. I do not know whether it is through the vines or on the front steps but I think it is through the vines.

The automobile, shown on Government's picture No. 7, is not in the position the automobile was in the night that Bobby Hall was killed. This car, the back end sticks back too far. This car here the back end of it is too far around. It is supposed to be here because when I got up I went to the window and I could see around here (indicating on picture to the jury). In other words, the car was more parallel with this fence here or the sidewalk here.

The well is just on the other side of this car and the body was lying about, I would say, about eight or ten steps, out about eight or ten steps in the road from the well. That would put it well within my sight from the brick steps. The pool of blood was about the same place. The car did not block any of my view of what was happening.

This is where Mrs. Jernigan lives, over on this side of the square, approximately over here. She lives right in this house.

This picture, defendant's exhibit No. 3, purports to be a front view of my home, taken from the east looking towards my house. Those vines on the front are a summer vine. Kudzu is what it is. In the winter there are no leaves on it. In other words, my vision is not obstructed in the winter time. There were no leaves on it in January when this happened.

Re-Cross Examination.

This car in the picture is standing about where the car was standing but the back end, Bob, was around this way. The car was not parked like this car. It was not parked

like this one is now but the point or the location is the same, about the same place, I would say it was six or eight feet this side of the well. I would say this car in the picture is ten or twelve feet this side of the well. I did not have this car placed there this morning. The gentleman on the end of the table there had it placed. It was not done at my suggestion. He asked me how the car set. He said I am going to drive my car over there and park it. I did not even go out of the front door. I still stood at the house. He had told me before parking the car that he was going to do that for the purpose of taking this picture and he went and parked it and took the pictures. After he parked I told him that is where it was. I told him that then and there but he didn't change it. He did not change the manner and way it was parked before he took the picture. He drove over there and got out of the car and he stood over there on the other side of the well. When the picture was made, after he made the picture, he came to the house and that is when I told him that I didn't think this car here was parked like it was that night. He walked over to the house. The photographer was on the front porch. After I told him the car was not like it was that night, he did not undertake to make another exposure and change the location of the car, not that I know of.

I would say it is 30 feet or 30 steps rather from this corner here to this well, to that post.

I have had no conversation with Mrs. Jernigan or anybody else with reference to the location of the automobile since Mrs. Jernigan was on the stand. I have not mentioned to anybody about the location of the car. The first suggestion I had about that was this morning when this gentleman over here mentioned it. I told him how the car was parked. This morning when the Federal Bureau of Investigation agents were at my home is the first time that anybody had mentioned to me or I had mentioned to

anybody about the location of the car on the night of the killing. That was the first time.

Re-Direct Examination.

If the car had been placed as I said it was, like the other one was, I could have seen the well.

172 MRS. OLLIE JERNIGAN, 16th Government witness sworn, recalled, testified further on

Re-Direct Examination.

I am Mrs. Jernigan who testified here yesterday.

This picture, Government picture No. 3, this part leads to the front door of my home. The picture does not appear to have been made exactly from the front. It was made from kind-of the side front. This walkway here shown in the picture leads up to my front door. The well is right back here. This view from my front door and looking to the well shows that you can see the well from that point.

Government picture No. 1 is a view taken from my house to the hotel. It is taken from the driveway of my house. On this picture the well is approximately right in there. That is the well right there. From that point you have a clear view of the well.

This picture was made from the side front across the front steps right here. There is some shrubbery on the side and it was from the window on the other side of the scrubbery that I looked out. In other words, the window is over here and I was looking out of the window in this direction. The well is right here. (Indicating on picture before jury). I certainly had a clear view from this window here to the well.

Defendant's Exhibit No. 7 is a picture of my house, looking towards my house, and it is from this point that I was standing and could see the well. The window is right in there. This shows the view from my house to the well from the window. That is my house over there in this picture. This represents a view from Mr. Ledbetter's house across by the well and over to my house.

With respect to this automobile the automobile is approximately where it was that night, just about.

On this picture this is the street light right here and the car was parked between the well and the street light and the well on the other side of this car and he drove just below, about ten or twelve steps from the well toward this here, not out in the street but just a little, out towards the street from the well. The well is on the other side of the car and there was kind of a little bottom there, not exactly even with the walk leading in the Courthouse but it was right out in here somewhere, not so far out but just a little ways out.

Re-Cross Examination.

There is a little drain there where water usually stands when it rains and the contour of the land right there drains off down to in front of Mrs. Cox' house. That is not out in the street. It is not exactly even with the sidewalk but the little drain is out this way and it leads out this way too. It graduates after it leaves the edge of the sidewalk but the drain is kind-of sloped out this way, I think, into the street a little bit. The main flow of the well comes down here and here is a picture, that concrete thing there, where the overflow is where the water goes down in. Now, this part of the land there doesn't go out and extend beyond that concrete thing but just a little. I would say about two feet anyway, about two feet, two

or three feet. If it extended any distance at all, it couldn't be more than the distance between counsel and me.

As near as I could say, this car is standing about where the car was standing that night. The car was headed in just like it is there at just about that angle. It was at almost an angle like that. It was not horizontal with the wall but it was just parked in. It was not exactly straight. It was almost like that. The car in this picture is parked as near as it could be parked at the angle the car was parked that night, in my opinion. I think it is parked just as it was parked that night. I couldn't judge how far the car was from the concrete tank there because there was a shadow from the car to the well. I could see the people moving about on the other side. The light was high enough for me to see them.

This light in front of the hotel cast a shadow over the people and, of course, right beyond the car, and you could see them, but the shadow from the light that reflected on the car went on beyond the people or some rather but not enough that I couldn't tell. These men were not in the shadow of the car all the time. They were moving about all over the ground out there, over the entire radius of the shadow and out past the car some times.

I couldn't tell how many I saw moving out past the car. I didn't stay there so long and see everything but while I was standing there I could see several people moving about, but I couldn't tell who they were. I saw them move out of the shadow and move back in the shadow.

In my best judgment I didn't stand at the door and window together over five minutes. I closed the front door and went to the window. In the two times I didn't stand there over five minutes, not over five minutes all told. I then went back to my bedroom. This is the front bedroom and this is my bedroom here on the picture. It was back of this front bedroom. I was in this other bed-

-room. My living room is as long as from where I am over yonder (indicating). Then I turned to the right to enter another bedroom going in this direction and I was sleeping in the bedroom to the rear of that one. I do not know what size the bedroom is that I first entered after I left the bedroom. It was about the size of the section those people are sitting in. The next bedroom in which I slept was just a little bit larger than that. The bed in which I slept in this room was opposite the door adjoining the next room. It was located like this and the other bed-room was like this (indicating). The bed was not across the room. It was right at the door.

I closed my front door when I went in, in fact closed all the doors and windows and after I got into my bedroom I could still hear the licks, even after I put my head under the cover.

It is between 50 and 75 yards from my house over to the point where I saw these people. That is my best judgment. That is the distance from the steps of my house to where I saw them at the well. I would say it is between 50 and 75 yards.

Mrs. Cox lives in this house right here (indicating on photograph). She is the Postmistress at Newton. She lives in the house right next to the post office, that is north of the post office. This picture shows the home where I lived at that time, also the post office, the well and Mrs. Ida Mae Cox' home.

Re-Direct Examination.

-I would say Mr. Ledbetter's porch was closer to this automobile than mine.

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MISS ANNIE ELLIS, 20th witness sworn in behalf of the Government, testified on being recalled

on

Re-Direct Examination.

I am the one who testified here yesterday. This Government picture No. 6 was made from my bedroom window facing the jail. This is the jail and this picture is made from my bedroom window. That is where I was the night this occurred. This is the window from which I was looking and saw the things I testified about. I was there this morning when these pictures were made. A man can be seen here at this point.

This picture, Government No. 2, was taken from my front bedroom facing the Court-house and this is the location where the car was parked. I could see from that point to the car. I can see through here. There is a man standing there in this picture which was made there this morning.

On January 30th when this happened there was no foliage on these trees and bushes and things. In other words, in January and February, this was more open than it is now and it was no trouble to see through there. This was also cut back and it has grown two or three feet, but even without cutting it back the foliage was nothing like as heavy.

Re-Cross Examination.

I do not know the names of the shrubbery around the front of my home. I know there are some nandinas and verbinas and arborvitaes. I also know there is some pittosporum in the front but not in here (indicating on picture). I do not have any pittosporum to the rear of my home and not any between my room and the jail. There

is pittosporum on the front. I do not know the names of the other shrubbery. I do have two kinds of evergreen shrubbery in the front of my home, directly in front. That kind of shrubbery does not extend on down my coping.

This is my front bedroom window which we do not use, I mean do not use that room, as shown in Defendant's Exhibit No. 10. This shrubbery here is along the porch, that is the side of the porch, but it doesn't extend out over three feet around the coping of the porch. This was not the window that I was looking out of that night.

This Defendant's Exhibit No. 13 does not show the same window—O yes it is the same window just shown me in another photograph. That is the same window only taken at a different angle and a different distance; but we do not use that window. I cannot say what kind of shrubbery this is right in here. It is not evergreen. That there is an arborvitae, which is an evergreen. That is out in the corner of the yard. It does not obstruct any view from the house. This is not the corner of the yard between the jail corner and my house. This corner goes down to the front of the building and you see the jail sets back here. This is the front of the building. You see, this is the coping around the yard. This is the east side of my room or the side next to the jailhouse. That is the front part of the house but you see our bedroom extends on farther back and this doesn't have anything to do with our bedroom. Our bedroom is back here (indicating on picture). Our bedroom comes off in an "L" next to the jail. That is the east side of my home. This shrubbery over here is not between the jail and the "L" of our home. It is out this way. There is a distance between the shrubbery. It is out in front of the building-like, a distance I don't know. Mr. Short knows as much about it as I do.

Mr. Short, if I may now, this is the picture that is taken with the view from my bedroom and not here, because you are standing behind the shrubbery. You see how

plain the view is from my bedroom to the jail. This picture was taken on the front and the shrubbery is on the front but not between my room and the jail. It is only in the front of the yard. This picture was taken just outside of the window of my bedroom and right in here is where I saw what little I said I saw. What I saw I saw from right in here.

Re-Direct Examination.

On Defendant's Exhibit 13, this is my room back here which extends out, as Mr. Short says, on the east side, but back of this shrubbery; and there is some distance between the front and back of the house. I had a plain view of the jail as this shrubbery is all in the front part of the yard. The window I saw out of is back here and the view from that point to the front of the jail is clear.

Defendant's Exhibit No. 8 here shows my home and over here is the jail. My room is back here and I could see straight across here with a clear view.

Government rests.

(In the Court's Chambers.)

Mr. Hager:

Your Honor; we have a motion for a directed verdict on both counts of the indictment as to all defendants and we have reduced it to writing and Mr. Kemp will read it:

178 DEFENDANTS' MOTION FOR DIRECTED VERDICT.

The defendants move the Court for a directed verdict because:

(a) The government has failed to carry the burden in said case and has failed to prove the allegations of said indictment and has failed to prove the allegations of either count of said indictment;

(b) The evidence is insufficient to form any issue for the jury to determine;

(c) The evidence fails to prove any offense or offense cognizable in this Court and fails to prove any offense or offenses of which this Court has jurisdiction.

(d) The evidence fails to prove any crime against the laws or statutes of the United States.

(e) The evidence fails to prove any act or acts which constitute a violation of any statute of the United States.

(f) There is a fatal variance between the allegations of Count Two (2) of said indictment and the evidence introduced, for that there is no proof that the defendants acted under any law, color of law, statute, ordinance, regulation or custom of the State of Georgia, County of Baker, or Municipality of Newton.

(g) The evidence fails to prove that the defendants deprived Robert Hall of any right, privilege or immunity granted or secured to said Robert Hall by the 14th Amendment of the Constitution of the United States.

(h) There is a fatal variance between the allegations of Count 3 of said indictment and the evidence, for that the evidence fails to show or prove that the defendants conspired among themselves or with anyone else to violate any statute or law of the United States.

(i) The evidence is insufficient to prove that the defendants conspired among themselves or with anyone else to violate any statute or law of the United States.

(j) The evidence fails to prove that the state or any sub-division thereof ever sanctioned the act or acts of the defendants in taking the life of Robert Hall.

(k) The evidence fails to prove that Robert Hall was subjected to different punishments, pains or penalties by reason his color or race, than is prescribed for the punishment of citizens.

The Court:

All right, the motion is overruled.

Mr. Hager:

Your Honor will allow me an exception.

The Court:

Yes.

(Returning to the Courtroom.)

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MR. M. CLAUD SCREWS, one of the Defendants and 1st witness sworn in behalf of Defendants, testified on

Direct Examination.

I do not think I have been sworn. (Witness sworn) My name is Claud Screws. I hold the official position of Sheriff of Baker County. This is the seventh year I have been Sheriff of Baker County.

On the 29th day of January 1943 I held a warrant for the arrest of one Bobby Hall. He was charged with stealing a truck tire. I am acquainted with Mr. T. A. Riley. He is Justice of the Peace of that district. I do not recall the number of it exactly. I have seen his signature and I think I am familiar with his signature. I also think I know Mr. George Durham's signature. The top of this warrant exhibited to me bears the signature of George Durham and, in my opinion, this signature is that of T. A. Riley.

Mr. Riley does not fill out all of his warrants. I fill out some of them. I do not know who filled out this one or I am not sure. I might have filled it out but I do not recall.

I am familiar with this book here. That is T. A. Riley's criminal docket. Since the Welfare Office has been in Mr. Riley's office, the Justice of Peace's office, this book has been laying on my desk, in my office. I have made some entries in this book.

On page 1 of this docket it looks very much like I made that entry. I can't see too good but it looks very much like it.

I think this is my writing on page 6. I think that is mine. To the best of my judgment, I put this entry on page 19 of the criminal docket of the Justice of the Peace. My best judgment is I put this entry in the book up here on page 55. I am not positive about that. I do not think I made the entry on the lower half of the page.

This is my writing on page 76, I think. I think that is mine. On page 77 it appears to be mine too, page 82 appears to be mine and page 83 the same thing. I really do not know whose signature this is here where it says "dismissed".

The entry on page 84 appears to be mine.

It was a custom for me to make these entries for Mr. Riley. During the last year or two I have had working

in my office a secretary, Miss Edna Fisk and as deputies I have had Mr. Roy Salter and P. G. Wilson. Mr. Salter has, I am sure, made some entries in the book too.

The Welfare Department occupies Mr. Riley's office now in the Courthouse. They have been occupying his office ever since we have had a Welfare Department. I do not know how long that has been. I have no idea how long that has been. It has been longer than a year or two. I would say Judge Riley lives a mile from the city limits and a couple of miles from the Court-house.

I received this warrant some time a little after first dark, in the early part of the evening because I had been out in the country and came back. I had been out in the country that afternoon. I went down to Mr. H. T. Rentz, County Commissioner of Baker County, and arrested a darkey down at his place between sundown and dark and it was some little bit after I got back to town, some little bit after dark; and pretty soon after I got back I received this warrant for the arrest of Bobby. But I was doing some work in the office, I did not get to go serve it. Around between 11:00 and 12:00 o'clock Mr. Kelley and Mr. Durham, Mr. Jones, was in my office. I told Mr. Jones I had a warrant for the arrest of Bobby Hall and asked him if he would go and arrest him and take my car and asked Bob Kelley would he go with him. They said they would and immediately they left to go get him.

About 30 minutes, I guess, after they left I walks out to the well to get me a drink of water. They drove up to the well and I asked them, I believe I asked them, I said "Did you get him?" or I saw him in the back seat. I asked them "Did you get him" or Frank said "Here's your man" or something. I do not recall just exactly what words was spoke right then. I walked around and I tried to turn the door on the left side of the car and it seemed to be hard to open or locked or something; so, I walked around on the right-hand side of the car, walked around back of

the car and opened the door. I opened the door and I said "All right, Bobby, get out" and I noticed he wasn't in any hurry to get out but when he, when I did see him come out, I saw something coming out ahead of him like that (indicating) and I discovered it was a gun; and he said "You damn white sons"—and that is all I remember what he said. By that time I knocked the gun up like that and the gun fired off right over my head; and when it did he was on the ground by then and me and Kelley and Jones ran into him and we all were scuffling and I was beating him about the face and head with my fist. I knew Jones had a black-jack and I told him to hit him and he hit him a lick or two and he didn't seem to weaken and I said "Hit him again." When he fell to the ground, we didn't hit him on the ground.

I told Jones and Kelley to take him up and let's carry him to the jail. They took him up and I walked on ahead of them on into the Courthouse into the office. The hall goes right by my office door, got the key and they went and put him in jail. I didn't go any further than my office. They came back to the office and I asked them, I said "What sort of shape is he in?" Jones, I believe it was or one of them, said "Well, he is in bad shape." I said, "Well, I had better call the hospital and get an ambulance sent down here for him." I went to the phone and I called Dr. J. M. Barnett or the hospital one. I do not remember which I called first but I called both of them and I told Dr. J. M. Barnett to treat the patient and send me the bill, sent him on to the hospital and told the hospital to send the ambulance down there for him, which they did.

At no time when I saw the deceased or Bobby Hall did he have any handcuffs on him. I would be afraid to say how long it was before he was beaten to where he quit resisting us or quit trying to assault me because in a time like that you would be a poor judge of time, I think.

I imagine Bobby Hall weighed 175 or 180 pounds, maybe more. I wouldn't know how old he was because you can't tell about a darkey's age much. He was a young negro though. As to whether he was an able-bodied man, there wasn't a thing in the world wrong with him as far as I know. I have been knowing him all his life.

Cross Examination.

I am not sure, colonel, whether I wrote the body of this warrant exhibited to me or not. I do not recall whether I did or not. I do not know my handwriting too good because I can't see but very little through this (witness using magnifying glass). As to why I can recognize Judge Riley's signature and Durham's, it is wrote right smart larger than the body of that warrant.

I do not remember whether I did or did not tell Mr. Crawford and Mr. Calhoun of the FBI that I did not know who wrote this warrant. I do not recall as I told them that I did not write it. I just don't remember. They got a written statement from me.

I told counsel that I probably did make the entry on page 75, that it looked kind-of-like-it. The writing on this warrant doesn't look larger to me than the writing that made the entry in this book. I do not know as I could see it better with better light. I just wouldn't know.

I did not identify this entry on this Justice of Peace's docket on page 75 as the docket entry of this warrant. I did not do that. I do not recall which pages I was identifying here a while ago because counsel was turning the pages. I do not know whether the entry of this Bobby Hall warrant here on page 77 was what I was talking about. I do not recall whether I seen the entry on the Bobby Hall warrant. I do not remember seeing Bobby Hall entry on there. I see it now. I probably did make

that entry. It is probably my entry. I wouldn't say positive.

I testified a while ago that I had made a number of entries in this docket for the Justice of the Peace. I certainly do not recall ever telling Mr. Calhoun and Mr. Crawford of the FBI, when they interviewed me and had these docket sheets and this warrant and were talking to me about them, that I had never made an entry in the docket, or anything like that. If I told them that, I do not remember it. As to there being any reason why I should not remember it, like everybody else I do not remember everything. I knew at the time they were talking to me that this Bobby Hall killing was under investigation. They talked to me about it. As a matter of fact, I was the first man they talked to about it, so they said. They talked to me several different times. They talked so much until I couldn't keep up with all of it to tell you the truth. I say that if I made that statement I do not recall it.

I won't be positive neither way as to whether I wrote this warrant. My mind has not changed about it since I heard the handwriting expert this morning.

I had known Bobby Hall ever since he had been grown. Judge Riley lives down the highway No. 91 towards Colquitt. I sure do not know who owns the place that he lives on. I guess it is Willie Hall, the father of Bobby Hall. I do not know, as a matter of fact, that Will Hall furnishes him a place to live, a place for Judge Riley. I do not know that.

As to Bobby Hall being a mechanic, I saw him with mechanics' clothes and working on automobiles. He never did do any for me. I have never seen him work on tractors. He worked in another man's place of business there. Right at that particular time I think he had a place where he carried on his business. He was in and out there.

He had just moved from his home, I think, down there where he had been a mechanic.

He had been born and raised there around Newton, all except some time he lived over in Colquitt, I mean in Miller County, which is 20 or 30 miles from Newton. I think it is true that he had lived in Baker County for the past several years.

I said I got this warrant some time after dark. I did not say I got the warrant about dark, I said some time after dark. The reason I didn't go and serve it when I got it was because I was working on some tax in the office—the tax receiver, I have all of the delinquent tax in my office, and I was working on that at that time. I started to work on the tax books shortly after I came back from out in the country.

As to the emergency that I decided to have Bobby Hall arrested about midnight, that was the first time I had had time. As to whether I thought he would be out of pocket the next morning, colonel, my custom is down there when I get a warrant to serve it. It don't lie in my office. I believe anybody in the county will tell you that. I was fixing to serve this one. I had it served.

I walked out in town a time or two that night. I think I went to Joe White's filling station. The best I remember I think I did. I think I also went over to Johnny West's place. I do not recall whether Kelley and Jones and I went over there together or not. We met up over there. That was around 9:00 o'clock, I imagine, probably between 9:00 and 10:00, about 9:00 or 10:00 o'clock, something like that. It was not from there that I sent Jones and Kelley on out for Bobby. We three did not leave there together. They went out ahead of me. I do not know where they went. I did not say anything to Jones at that time about serving this warrant. I did not ask Kelley anything about helping me or helping Jones serve it at that time.

There was no emergency about the service of this particular warrant that I know of. When I left Johnny West's place I went back to the office. I did not take a drink over there. That is a bar-room, Johnny West's place is but you do not have to drink because you go in there. I did not take a drink in there. There was a little dancing going on in the back-end. I didn't hear no pistol. I haven't heard no pistol over there. There was a jook organ going and I am sort of hard of hearing anyway, possibly a gun fired but I didn't hear it. That room is not so large.

I do not recall Johnny West telling me I had better go on home and had better not try to go out and arrest anybody. I say he did not tell me that. I remember that he didn't tell me that. If me and Johnny talked any I do not recall it and if we had any conversation at all I do not recall it. I did not see Frank Jones and Jim Bob Kelley drink any in there.

Explaining the purpose of our visit there, the three of us there at that place at 9:00 or 10:00 o'clock at night, the jook organ was just playing and I walked around there, didn't especially have any business.

According to my best judgment it was about 10:00 o'clock probably when I left there. I wouldn't say exactly but maybe some time between 9:00 and 10:00. I do not know exactly how long at that time I had had the warrant in my possession. I would say two hours at least. I would say around two hours when I could have served it if I had had time. I had been in the office working of the time. I think I went to Joe White's before I went to the office the best I remember. Then, I went from my office to Johnny West's. I went out by the well to Johnny West's.

About my feelings toward this negro in connection with his efforts to get the pistol, I did not feel hard towards him a bit, colonel. I did not have any ill feeling towards him because I had hoped him out of several tights, paid a fine over here at Moultrie to the Sheriff

about a year ago; paid it with my own money and he paid me back a dollar or two at a time. He paid me back. I got the Sheriff to settle the trouble just for the costs over there.

I got a letter from Mr. Robert Culpepper about the pistol or I think I remember getting a letter the day that this occurred or the day before, something like that. At that time I had already been called before the grand-jury about this pistol.

It was around 12:00 o'clock, the best I remember—I wouldn't be positive—when I sent Jones and Kelley out there, 12:00 o'clock at night. I do not know why Jones and Kelley happened to come over to my office at that time, except just saw the light in there. Well, Kelley was talking to me, I had a little piece of property over there not far from where he lived and he was wanting to see me about buying some property. That was around 12:00 o'clock at night. He had said something to me about it before that time. He had been talking to me some time prior to that. We did not discuss that at Johnny West's or if we did I do not remember.

I would say Jones and Kelley were gone 20 or 30 minutes before they brought this boy back, though I am not sure, would not be positive. When they rolled up there, Kelley and Jones were in the front seat and Bobby Hall on the back. I saw the shotgun and when I saw it, he was coming out of the door with it.

My car is a Mercury, a four door sedan, closed car, four-door sedan. As to what happened there at the well at that time; they drove up and I went to open the door on the left and for some reason it wouldn't come open; so I walked right around behind the car on the right-hand side of the car and opened the right-hand door and told Bobby, I said "All right, Bobby get out" and I noticed he was just a little bit slow about getting out; and torectly (directly) I saw the shotgun barrel come out ahead. At

that time Jones had walked around sort of behind me. I do not recall whether Kelley had got out of the car then or not, I just do not recall. I did not see where the negro got the shot gun from. When I saw it, it was coming out ahead of him. I was standing right there at the car door sort of behind the door. I just sort-of opened the door and stepped behind it. I grabbed the gun as soon as I discovered it. The barrel of the shotgun was the first thing I saw. It came out ahead. I did not have a black-jack that night. I never owned one in my life. I do not ever recall owning one in my life. I did not have a pistol. I did not even have my pistol. It was in the office. I sure didn't have my pistol that night. It was in the office.

Like I said before, colonel, I would be afraid to say exactly how long that thing lasted out there, not very long. I do not know. It was kind of a busy time with me. There were three white men there and one negro, three strapping men.

I deputized Kelley to go out there. I asked him to go.

About process or warrant to take or keep Bobby Hall's pistol the only thing I had was the order that the Judge gave me, Judge of the Superior Court. He issued only an oral order in that case. He told me orally. He told me in his chambers in Camilla on Monday after the pistol was taken from Bobby on Saturday night. Now, as to the dates, I do not remember. It was on Monday after it was taken on Saturday night. I sure don't remember about when that was, some time in December, but I don't remember what time.

I took a defendant to Camilla for him to plead guilty before the Judge and he entered his plea and I talked to the Judge there in his chambers. The Judge told me—I told him I said "Now I know these darkeys are a little inclined to be biggety" and one thing and another and I

said I want to explain to you just how it happened. The Judge told me to keep it until he sent an order for it. He told me that in Camilla in his chambers. I don't think there was anybody else present. I think the Clerk and the defendant had just stepped out of the door.

I did not go down to Camilla a few days ago and talk to the Judge about this situation, about this order business. I have not talked to the Judge anywhere. I was in his presence probably when he was talked to, in the Judge's presence. Bob Short was who the Judge was talking to in my presence. I do not recall when that was but it was one day last week, I believe.

Q. Now, as a matter of fact, didn't Judge Crowe tell you—

Judge Crowe did not tell me or my counsel or both of us that he never made any such order or gave me any such order as I referred to, last week. He did not. Judge Crowe did not tell me that. He says to my attorney and I was standing in their presence, he said "Well, I wouldn't want you to put me on the stand." He said "I wouldn't want you to put me on the stand but I do remember several different occasions of discussing the same matter with the Sheriff but I would not recall whether it was this time or the other time or which time it was." When we talked with Judge Crowe about this Bobby Hall pistol last week, Judge Crowe did not tell me and my counsel that he had never given me any order or said anything to me about this Bobby Hall pistol.

This conversation took place right out here in Albany, coming from the Court-house. He was coming from the Court-house over there to where the street runs by them hotels. I do not know what the name of the street is. The Judge was talking to Mr. Short in that conversation in my presence and Mr. Short was asking him about having

him subpoenaed to testify about this particular case; and he said "Well, I had rather not get on the stand." He said "I do remember a number of times that I discussed things like that with the Sheriff but I wouldn't know positively." I am talking about the Bobby Hall pistol. But the Judge said "I wouldn't know positively which time it was."

The Judge did not tell me that he had no recollection of ever giving an order to me in this case. He did not say that. He didn't say that he did give me one. He said "I remember giving you them sort of orders time after time but I don't remember who it was or when it was" or words to that effect.

When I was down at Joe White's filling station, I saw Cal Hall, Jr. I think I had a conversation with him. I think probably the best I remember I did have a conversation with Cal Hall, Jr. I do not know as I remember what I talked to him about.

Re-Direct Examination.

I never have made a statement to anybody that the damn negro had lived long enough.

191 MR. R. L. HALL, 2nd witness sworn in behalf of the Defendants, testified on

Direct Examination.

My name is R. L. Hall. I am acquainted with Mr. M. C. Screws, the sheriff of Baker County. I recall the time or occasion that Bobby Hall was killed down at Newton. Between 9:00 and 10:00 o'clock that night or some time during the night I saw the Sheriff at my home. He came there to get me to help him go arrest a negro. I did

not go with him because I had some hands working to my house fixing a fire place.

I observed the Sheriff's condition at that time. He just came to the house and asked me would I go help him arrest a negro, this Hall negro you are talking about, and so far as his condition he looked as normal as I have ever seen him. He got near enough to me for me to smell his breath if he had had liquor on his breath and I did not smell any.

Cross-Examination.

It was around 10:00 or maybe a little after 10:00 at night when the Sheriff came out there. I live in Newton in the town there.

I know Mr. Edwards and Hot-Shot Bailey. I think they were in jail there at Newton at the time this killing took place, waiting to be carried off to serve their sentences, and they were later taken away. I think they were carried first to Reidsville and then transferred to Cedartown. There is a camp up there in Cedartown.

I did not make a trip up to Cedartown and get these two boys out of the chain-gang. I didn't get them out. I got them out and paid their fine, it is true. I went up to Cedartown. Off handed I couldn't tell you when that was, with the exception of one thing. I know it was the same time we had just gotten through on the farm breaking up land and that's the reason I went up to see them.

I remember when the grand-jury met in Macon. I couldn't recall but it might have been immediately prior to the meeting of the grand-jury when I went and got them. The District Attorney's office in Macon did not have process in the Warden's hands at Cedartown to bring these two men to Macon as witnesses at the time I got them. The Warden up there certainly did not tell

me that he had process to send them to Macon as witnesses.

I do not know how far it is from Newton up to Cedar-town. I can tell about how far it is. I am sort of half-way guessing but it is about 275 miles—not 300 but about 270 miles. I made about a 500-mile drive for these boys when I went up there to get them. I can explain the details why I went up there if counsel would like to know.

The Sheriff and I are friends, I think. There had not been any grand-jury subpoenas scattered around Newton when I went up there, I don't think. I am positive they had. I could possibly be wrong but I am positive that there hadn't been any subpoenas in Newton at the time I went up there. Before I went up there I went to the Prison Commissioner's office to get permission to go see them and they can tell you. Mr. Mann could tell you when I was up there and you all know when you issued the subpoenas.

Re-Direct Examination.

I told the District Attorney when he was questioning me a while ago that I could tell him the details of why I made this trip. The reason I went there was because Hoke Edwards, one of the boys in the penitentiary, is the son of my overseer out on the farm, and so he is the one that asked me to try to get him out and pay his fine and he would pay me, would return the money in the fall. So, we had gotten through laying-by land and that's the reason I knew the approximate time of year I went up there. So I knew if he would come back to work on the farm, which his father thought he would, I had a hand at that time that I could put with him and I went up there to check, to see if I paid his fine if he would come back to work and if he didn't I could use this other hand as well as this other boy up there; and I worked both boys when

I paid their fine. In fact, as every farmer knows, labor is short. I certainly would have paid his fine in the first instance if Judge Crowe had permitted it. That's the reason I did not in the first instance, is that Judge Crowe would not permit it.

Re-Cross Examination.

Some one went with me on this trip, M. W. Irwin and nobody else. Hoke Edwards and his wife are living with me now on my place. Burke and his wife, Burke worked for me, I reckon, a month and a half but they are not there now.

I did not bring the Edwards and Bailey boys back from Cedartown. I do not know who actually brought them back when they were released. I paid their fine up there. As to why I didn't get them then, I didn't pay it the same day I went up there. In fact, it was a good bit, a little bit after that when I paid the fine. I paid the fine in Newton.

Frankly, after the District Attorney has mentioned their names, I think it was Mr. Wilkinson and Mr. Salter who went and got these boys. Salter is a Deputy Sheriff or was at that time. I do not know whether Wilkinson was a Deputy Sheriff or not. They were actually brought back to Newton by the Deputy Sheriff or by two Deputy Sheriffs if Wilkinson is one. I did not pay for the trip up there.

195

MRS. CLYDE EDWARDS, 3rd witness sworn in behalf of Defendants, testified on

Direct Examination.

I have not been sworn. (Witness sworn.) My name is Mrs. Clyde Edwards.

I was present at a time when Mrs. Joe White visited the hospital here in Albany and came back to the filling

station and made some statement with reference to Mr. Claud Screws, who was then in the hospital with his eyes. I heard what she said. They were asking me how Mr. Screws was and I told them as near as I could what kind of condition he was in and I was telling them how sorry I was for Mr. Screws; and she said—Can I tell what she said? She said "She wasn't sorry for the son-of-a-bitch at all", that she "didn't want to see him blind but she would enjoy seeing him a corpse."

Cross Examination.

I had been up to see the Sheriff at the hospital that same day.

Re-Direct Examination.

I did not say she had been to see the Sheriff, I had been.

MR. HARRY McGAHEE, 4th witness sworn in behalf of the Defendants, testified on

Direct Examination.

My name is Harry McGahee. I am acquainted with Sheriff Screws. I am acquainted also with Mrs. Joe White. I recall about the time the Sheriff got his eyes hurt. I have heard Mrs. White make some statement with reference to the Sheriff since that time.

I was at the service station or drove up there about five minutes after they carried the sheriff to the hospital and she drove up, had come from Albany, and she asked what the excitement was about and I told her the sheriff had just gotten shot and she said "Well, I hate that I wasn't

here to have seen that", said "I have been wanting to see something like that a long time and I had to be out of town at the time when that happened." And I spoke about a puddle of blood down there and she said I am going to drive down there and look at that.

Cross Examination.

I live in Newton. I work turpentine, manager of turpentine place there for the J. B. Davis Company. There was somebody else present there. Mr. Purd Odom's wife was present. She was with Mrs. Durham or Mrs. White. What I have related was practically all that was said at that time. There was nothing mentioned in that same conversation about how the Sheriff killed Bobby Hall. She did not mention Bobby Hall at all then.

196 MR. EDGAR CROSBY, 5th witness sworn in behalf of the Defendants, testified on

Direct Examination.

I live right in the middle of Newton I call it and the filling station I operate is just across the street from me. I would say the filling station is about 60 yards from the Courthouse. You go down state road 91 or 37, they both join and come together, you go south down that highway from the Courthouse to my service station. If you left the well or the Courthouse going to my filling station, you would go south. If you went to Mr. Ellis' home from the well or from the Courthouse you would go north, wouldn't you go north in the opposite direction that you would go if you were going to my service or filling station.

I recall the occasion when Bobby Hall was killed there in Newton near the artesian well. I had been hunting

that night. I went down back of the warehouses. Down back of the warehouse there is a swamp. You can go as far as you want to up that swamp. I didn't go but about a mile.

In December I will have been living in Newton seven years. I am familiar with the street lights in Newton. I said I remembered the night that Bobby Hall got killed and that night, I remember, I went hunting. Coming back from hunting I came up kind-of by the jail there, come by the post office and by the jail. The street light out in front of the post office was not burning that night. The reason I recall I went in after my mail and happened to have my flashlight in my pocket and I turned it on to get up the steps.

When I left the post office I went by the well and got me a drink of water. I then went in the rest-room in the Court-house, which is right next door to the Sheriff's office. There was somebody in the Sheriff's office at that time. I saw a light on in there when I went in and when I come out I went in and talked with him. He was by himself. I would say that was about 11:30, somewhere about 11:30. As to observing his condition, he was working on his books, that is all. I didn't stay there but just a few minutes. I did not smell any whiskey there on the sheriff when I went in the office and talked to him.

Cross Examination.

I had not had a drink. I go hunting four or five times a week and hardly ever touch any whiskey.

198 MR. FRANK JONES, one of the defendants, and 6th defense witness, sworn, testified on

Direct Examination.

By Mr. Short:

Q. Is your name Frank Jones?

A. Yes, sir.

Q. Mr. Jones, I want to ask you just one question and what in rebuttal to testimony brought out this morning by Mr. Willingham: Did you hear the statement made by Mr. Willingham relative to having had a conversation with you?

Q. Did you hear the statement of Willingham this morning?

A. I did.

Q. Was the statement made by him true or untrue?

A. Untrue.

Mr. Davis:

Come down sir.

199 MR. M. A. McRAINEY, 8th witness sworn in behalf of defendants, testified on

Direct Examination.

My name is M. A. McRaney. I am acquainted with Sheriff M. C. Screws. I have known him about thirty-five years. I am engaged in the farming and turpentine business.

Q. Are you acquainted with and do you know the general reputation and character of Sheriff Screws in the community in which he lives for truth and veracity?

A. I do.

Q. Is it good or bad?

A. It is good.

(No cross examination)

MR. L. A. ETHRIDGE, 9th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is L. A. Ethridge. I have been sworn. If I live to next February it will be 68 years I have lived in Baker County. I am acquainted with Mr. M. C. Screws, the sheriff of the county. I have known him ever since before he was grown, I suppose 20 or 25 years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Good.

Q. You do know it and it is good?

A. Yes, sir.

Cross Examination.

Q. Is that all you are undertaking to testify about, Mr. Witness?

A. I understood him to inquire about his character and veracity.

200 MR. DAVID JONES, 10th witness sworn, in behalf of the defendants, testified on

Direct Examination.

My name is David Jones. I live in the Western part of Baker County. I am in the farming and merchandising business. I have resided in Baker County since the winter of 1901. I am acquainted with Mr. Claud Screws, the Sheriff of the County. I have been acquainted with him.

I reckon so far as I remember, about 15 or 20 years, something like that.

Q. Are you familiar with his general reputation and character for truth and veracity in the community in which he lives?

A. I think so.

Q. Is it good or bad?

A. Good.

MR. CLARENCE BRYAN, 11th witness sworn in behalf of defendants, testified on

Direct Examination.

I have been sworn. My name is Clarence Bryan. I live in Baker County. I have lived in Baker County ten years. I am acquainted with Mr. Claud Screws. I am engaged in the farming and mercantile business. I have known Mr. Claud Screws ten or twelve years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. I think so.

Q. Is it good or bad?

A. Good.

MR. J. B. HALL, 12th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is J. B. Hall. I live in Newton. I have lived in Newton or Baker County all my life. My business is

that of a merchant and farmer. I live in the City of Newton. I know Mr. Claud Screws, the Sheriff of Baker County. I have known him all my life.

Q. Do you know his general reputation in the community in which he lives for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

201 MR. A. L. BUSH, 13th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is A. L. Bush. I live in Baker County. I have been sworn. I have lived in Baker County all my life. I am farmer and Tax Receiver of Baker County. I know Mr. M. Claude Screws, the Sheriff of the county. I would say I have known him about 20 years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

MR. L. D. LAWRENCE, 14th witness sworn in behalf of defendants, testified on

Direct Examination.

My name is L. D. Lawrence. I have not been sworn. (Witness sworn.) I live in Baker County. I have lived

in Baker County about 37 years. I am acquainted with Mr. M. Claud Screws, the Sheriff of the County. I would say I have known him 20 years, about that.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. I would say it is good.

Q. Do you know it?

A. Yes.

Q. And you would say it was good?

A. Yes, sir.

MR. MORGE MANSFIELD, 15th witness sworn in behalf of defendants, testified on

Direct Examination

I have been sworn. My name is Morge Mansfield. I live on the Pineville Plantation, Baker County. I have lived there right about 15 years. I look after the farm interests there. I am acquainted with Mr. Claud Screws, the Sheriff of the County.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Yes.

Q. Is it good or bad?

A. Good.

203 JUDGE CARL CROWE, 38th witness sworn in behalf of the Government, called in rebuttal, testified on

Direct Examination.

I am Judge Carl Crowe. My official position is Judge of the Superior Courts, Albany Circuit. Baker County

is within my judicial circuit. January 1st will be three years that I have been on the bench.

I am, of course, acquainted with Sheriff Claud Screws of Baker County.

Q. I want to ask you, Judge, whether at any time in December 1942 you gave Sheriff Screws an order to hold a pistol that belonged to a negro Bobby Hall of Baker County?

A. I would say no and explain to you why I say that. Last week one of defendants' counsel and the defendant asked me with reference to an order to hold a pistol belonging to a negro named Bobby Hall. I told them that I had no recollection of having any conversation, much less issuing any order. I have no recollection of any conversation with reference to a pistol and Bobby Hall. My answer is that I did not issue any such order either oral or written. Mr. Screws said in that conversation that it was the same day that a man named Huckaby pleaded guilty. I told him I remembered Huckaby, remember the conversation because the indictment against Huckaby was obtained when I was Solicitor-General and I was disqualified, but he waived the disqualification. I remember the conversation with Huckaby and about the sentence of him, his plea and everything, but I told them that I had no recollection of having any conversation whatsoever with reference to Bobby Hall then or at any other time.

I never had any conversation with the Sheriff with reference to Bobby Hall that I have any recollection of whatsoever.

Cross Examination.

I do not recall that Mr. Short, when he approached me with reference to the Bobby Hall matter, told me that he would probably want to use me as a witness. I assumed,

from the conversation that probably that is what it was but I do not recall his stating that.

Q. I also asked you if you had any recollection as to whether or not you had instructed the Sheriff not to deliver the pistol to Bobby Hall and wasn't your answer this, Judge, "Bob, I do not have any definite recollection as to this particular case"?

A. I have no independent recollection.

Q. Or independent recollection?

A. That's right.

Q. "That I have no independent recollection of this particular case"?

A. That's right.

Q. "But I have on a number of occasions instructed the Sheriff not to deliver pistols"?

A. I gave two instances in which the matter of pistol had been talked to me, two instances, one with the sheriff —no, one with a man who came to see me with reference to a pistol and one when the sheriff saw me about a month ago or something like that.

Q. Didn't you say, Judge, that you were not in position to say that you did not tell the Sheriff not to deliver it but you just had no definite recollection?

A. I said I did not have any recollection. Probably I did make that statement.

Q. Well, you said something to the effect that probably you had instructed him?

A. No, I did not say that probably I instructed him to that effect. I said I had no recollection about having instructed him to that effect at all.

Q. No independent recollection?

A. That's right.

Q. As a matter of fact, you could have done it, since you have all of these matters coming before you and you pay no particular attention to it, couldn't you Judge?

A. I wouldn't say that, Mr. Short.

Q. You wouldn't say you could have done it and not remember it?

A. No, I wouldn't say. Looks like to me I might have had some recollection in view of the fact that I remember all about the Huckaby business and if it was at the same time as that looks like I would have some kind of recollection of it.

Q. It seems to you that you would have some kind of recollection?

A. Yes, sir, in view of what subsequently did happen at least.

Re-Direct Examination.

Q. But you do know, Judge, that you did not issue any order to the Sheriff about Bobby Hall's pistol?

A. Yes, sir, as I have stated.

The Court:

Very well, anything else?

Mr. Davis:

That is all.

The Court:

Both sides close? Well, let me see counsel then for a minute or two. Gentlemen of the jury, you will just remain in the box, if you please.

(In the Court's Chambers.)

Mr. Hager:

I want to renew the motion that I made yesterday on all the grounds.

The Court:

All right, that will be sufficient, won't it? I think the District Attorney would agree that is sufficient without undertaking to make a point on it.

Mr. Hager:

I renew it on all the grounds at the conclusion of the case and ask for an exception.

The Court:

Yes, the motion is Overruled and your exception is noted.

(Returning to the Courtroom.)

Mr. Davis:

If Your Honor please, the Government waives the opening argument and reserves the conclusion.

The following documentary evidence was introduced by the Government:

1. Letter from Robert Culpepper, Jr., Attorney at Law, Camilla, Georgia to the defendant M. Claud Screws, dated January, 28, 1943, and reading as follows:

Bobby Hall was over to see me with reference to regaining possession of a 38 Colt Automatic Pistol which the nightwatchman at Newton turned over to you to keep.

Since there are no charges against Bobby and the pistol was in his car, I presume that you intend to give it back to Bobby. If this is not true and you have any reason for holding it please advise me.

It is possible that I will come to Newton tomorrow and I will see you about this at such time.

2. Warrant purporting to be signed by T. A. Riley as N. P. and ex-Officio J. P., reading as follows:

State Warrant.

Georgia, Baker, County.

Personally came George Durham, who on oath says to be the best of his knowledge and belief Bobb Hall did on the 29 day of Jan. in the year, 1943 in the county aforesaid commit the offense of Stealing truck tire of a Firestone make and this deponent makes this affidavit that a warrant may issue for arrest.

GEORGE DURHAM.

Sworn to and subscribed before me, this 29—Jan. 1943.

T. A. RILEY,

N. P. and ex-Officio J. P.

Georgia, Baker County.

To any Sheriff, Deputy Sheriff, Coroner, Constable or Marshal of said County—Greeting:

George Durham makes oath before me that on the 29 day of Jan. in the year of 1943, in the county aforesaid Bobb Hall did commit the offense of stealing truck tire of a Firestone make,

You Are Therefore Commanded, to arrest the body of the party accused and bring the same before me, or some other judicial officer of this State, to be dealt with as the law directs.

You will also levy on a sufficiency of the property of said accused party to pay the cost in the event of final conviction. Herein fail not.

This 19.....

T. A. RILEY,

N. P. & Ex-Officio J. P.

Gentlemen of the jury, when our national government was formed and the Constitution of the United States was adopted, that instrument was adopted by consent of the states. The states themselves ceded to the federal government certain powers, reserving all other powers to the states or to the people, but they did cede certain powers to the United States Government. Our state is no exception. Our state is just one state of all the United States, just like the rest of them, and they all together empowered the national government to say that no state should deprive any citizen of the United States of certain rights and privileges.

In pursuance of that authority contained in the United States Constitution by agreement of the states, the Congress passed a statute that reads this way, that "Whoever under color of law, statute, ordinance, regulation or custom wilfully subjects or causes to be subjected any inhabitant of any state, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States or to different punishments, pains or penalties, on account of such inhabitant being an alien or by reason of his color or race, than are prescribed for the punishment of citizens, shall be guilty of a crime." That is the statute under which the second count of this indictment is drawn.

The Constitution says that, among those rights which a state through its officers and agents are not permitted to deny people, is the right not to be deprived of life, liberty or property without due process of law. By that agreement and the adoption of the Constitution, no state can deprive a citizen of the right to be free from illegal arrest and assault by the state through its officers; a citizen cannot be deprived of life, liberty or property without due process of law; cannot be denied the right, if he is charged with a crime of being regularly indicted, tried by a jury, sentenced by a Court; and then, in addition to those, the statute also provides that different punishments or penalties cannot be imposed on one inhabitant that is not common to all citizens, on account of his being an alien, that is not a citizen at all, or on account of his race or color.

Now, in pursuance of that statute the grand-jury has returned this indictment which you will have out with you and it is drawn in three counts, you will observe, numbered Count 1, Count 2 and Count 3. Of course, a count, gentlemen of the jury, in an indictment is just simply the allegation that the defendants committed some certain described crime, each count being separate and distinct from the other counts. In fact, each count might have been drawn in a separate indictment altogether. So, in this indictment there are three counts and the first one has been dismissed and you will not be concerned at all with the first count. You will not find any verdict on it one way or the other. Count 1 you will just ignore because it is not here before you for trial.

Then, Count 2 is drawn under the statute which I have attempted to quote to you in substance and Count 2 charges that the defendant, the sheriff, Sheriff Screws, and the defendant, Frank Jones, acting as officers, deprived Robert Hall of certain rights secured and protected to him and every other citizen of the United States by the Constitution of the United States. It alleges that as such

officers they denied him the right to be secure in his person from illegal assault and battery by officers of the law, and the right not to be deprived of life and liberty without due process of law, that is to say, without indictment by a grand-jury and without trial by a jury and without sentence by the Court in the regular due course of a criminal case under the state law; and that they denied him that right that he had to be tried according to due process of law and that they subjected him to different punishments from other citizens by reason of his race and color.

Now, that last part, gentlemen of the jury, of the statute which deals with different punishments on account of being an alien or non-citizen, or race or color, is a different thing from the first part of the statute which applies to every citizen. Under the Constitution of the United States, those other rights that I mentioned there protected by the Constitution of the United States apply to every citizen of the United States and no state, not only the State of Georgia, but no state in the United States has any right to deprive any citizen of the United States of any of those rights.

It is alleged in that same count that the other defendant, Jim Bob Kelley, aided and abetted these officers in committing the crime alleged and under a statute of the United States, whoever aids or abets another, cooperates with or joins in the commission of a crime, is himself guilty just like the other defendants would be if they committed such a crime.

And it is alleged in that same indictment that these defendants deprived Robert Hall of these rights which I have mentioned by arresting and then striking and beating him and causing his death. That is the second count of the indictment. It is the first count which you will have anything to do with. You will omit count numbered one altogether.

Then, there is another statute known as the conspiracy statute. That statute says that when two or more persons conspire or agree together to commit an offense against the United States and they do some act in pursuance of that agreement, that that itself is a crime.

First, I will say the third count in this indictment charges that these defendants did conspire and agree together to deprive Robert Hall under color of law of these rights which I have mentioned to you, as set out in the second count; and that in pursuance of that understanding or agreement they committed certain acts set out in that third count.

I might illustrate, if I can, the difference between a conspiracy indictment and what is known as a substantive offense. If a statute denounces a certain act as criminal and a man is indicted for doing that prohibited thing, that is known as a substantive offense. If two or more persons agree to violate that statute or commit that crime and they do anything in pursuance of that agreement, then they are guilty of a conspiracy, whether they ever commit the crime or not. That could be illustrated by reference to something which has nothing whatever to do with this case: Suppose, for example, that under a statute which makes criminal the stealing of goods from an interstate shipment, that is to say a shipment of goods that is coming from Florida into Georgia—there is a statute that says it is a crime to steal goods from such an interstate shipment. Well, let's suppose that an interstate shipment was coming into Albany from Jacksonville of goods on a freight train. Then, let's suppose that two men here in Albany hired a truck and went down to the train in the railroad yards and broke the seal on the car and took the goods out, loaded them on a truck and carried them away. Then, they would be guilty of violating that statute and that would be a substantive offense.

Now, let's suppose that when such a shipment comes into Albany on a train that two men agree up town here that they will get a truck and go down and take goods out of that interstate shipment and, in pursuance of that agreement, they go down here on the street and hire a truck but nothing else happens. They do not do anything else. They do not steal any goods; they do not even go down to the train at all. And yet they are guilty of conspiracy because they agreed that they would commit a crime and did an act in pursuance of that agreement, and they would be guilty of conspiracy, even though they did not commit the offense at all, the substantive offense.

Now that third count, the conspiracy count, after alleging that they did agree or have an understanding among themselves that they would commit this offense which is set out in the second count of the indictment, alleges that they committed certain acts which are denominated overt acts. You will find them set out in the indictment, if you read it. There are six of them and one of them is that the defendants, Jones and Kelley, drove to the home of Robert Hall. Now, these overt acts need not necessarily be criminal acts themselves, if they were done in pursuance of an illegal agreement. The second overt act is that Jones and Kelley arrested Robert Hall and handcuffed him. The third act is that Jones and Kelley drove Robert Hall to the Courthouse yard in an automobile. The fourth act is that they beat him in the Court-house yard, and the fifth is that they dragged Robert Hall unconscious from the well through the Courthouse to the jail; and the sixth, that Jones entered the jail and removed the handcuffs from Robert Hall.

Now, on that conspiracy indictment, gentlemen of the jury, you will observe there are two elements necessary to constitute the offense of conspiracy: One is that there must be an agreement or understanding among the defendants that they are going to commit this criminal act.

Now, that does not mean that it is necessary to show that the defendants got together around a table or anywhere else and made a formal agreement, either written or oral, or otherwise. It does mean that they must have a common understanding, that each one understands that they are going out to do a certain act, and that would be sufficient so far as the agreement or conspiracy feature of it is concerned. Of course, on that count if you find there was no such agreement, then you would not pursue that count any further because if there was no understanding of that sort, then there could be no verdict of guilty, because it takes both the understanding, the agreement, and some overt act. On the other hand, if you think that the defendants did have such a common understanding among themselves, then you would take the next step under that count and look to the alleged overt acts in the indictment.

Now, it would not be necessary, if you found that an agreement such as I have described did exist, for you to find from the evidence that all six of these overt acts were committed. It is necessary for the government in that count to show the commission of at least one of those overt acts. It is not necessary to prove, in order to convict, that every defendant participated in the commission of any overt act but it is necessary to show that some one—at least some one, might be more—but at least some one of the defendants committed some one of the overt acts. Well, under that conspiracy count, which is the third count in this indictment, you will look to the evidence and see whether those two things have been proved by the government.

Now, the defendants plead not guilty to both of these counts, count 2 and count 3. Then, at the trial the burden is on the government to produce evidence sufficient to convince the jury beyond a reasonable doubt that the defendants are guilty as charged in the indictment on either one or both of those two counts.

In the beginning of the trial the defendants are presumed to be innocent and that presumption continues until and unless it is overcome by the testimony introduced in the case, that is to say, testimony sufficient to overcome the presumption and to convince the jury beyond a reasonable doubt that the defendants are guilty.

Now, gentlemen of the jury, the case has consumed quite some time and everybody else connected with it has performed his duty and the responsibility of this case now rests with you and me. Our functions are entirely separate and distinct. I am under an oath and so are you to perform those duties which are assigned to us respectively. It is my duty to tell you what principles of law govern this case, what the law is that governs this case, and it is my duty to explain to you, if I can, precisely what questions you are to decide and from what you are to decide them. Your duty under your oath is to take the evidence on the questions which you are to decide and find a verdict which represents your honest opinion of what the evidence shows. Those duties are imposed upon us as a part of a tribunal constituted for the purpose of administering justice. You and I have no discretion. I have no discretion whatever in telling you what the law is in this case. If I believed the law to be one thing and I deliberately and consciously tell you that it is something else, then I would violate my oath. I am not going to do that.

If you make a verdict in this case from any cause, for any reason whatever outside of the evidence itself and what you honestly believe that evidence shows, you likewise would violate your oaths. It has been said that a jury can do whatever it pleases but that depends upon what kind of jury you have. An honest jury cannot be arbitrary. An honest jury can do only one thing; there is no discretion. A jury is not in the box to convict, not in the box to acquit. The jury is in the box to give judg-

ment on what actually the truth about it is and the verdict of either guilty or not guilty results incidentally from that honest judgment.

Now, gentlemen of the jury, in the trial of a long case a great many things almost unavoidably happen that ought not to be considered by a jury. It makes it sometimes right difficult for an honest jury to do its duty, when a great many matters are discussed in argument which in legal contemplation ought not to have any influence whatever with the jury. I say it makes it very difficult for an honest jury to make up an honest judgment on the evidence itself and nothing else. That has happened in this case, just as it does in a great many other cases. I will refer to just a few of them and I might preface that by saying this, that if you honestly believe that the district attorney has failed to prove that these defendants are guilty, but for some reason or other outside of the evidence you should find a verdict nevertheless of guilty, then you would violate your oath, and you would be unworthy to sit on a jury at all, just as I would be if I violated my oath. On the other hand, if you think this evidence, honestly and fairly considered, shows that these defendants are in fact guilty but for any outside reason, any feeling of your own or any other reason outside of your honest opinion of what the evidence shows, you should nevertheless find them not guilty, then you would violate your oath as jurors.

I am saying this, gentlemen of the jury, because I want you, regardless of whether your verdict is guilty or not guilty—I am not even interested in what that will be—I am interested, however, in explaining to you, if I can, the things that you are to decide and the things that you ought to consider in deciding those questions and to prevent you if I can from making a verdict for any other

reason on earth except what you think, the evidence itself shows.

One thing referred to by one of counsel, just to illustrate what I am saying, was a question to the jury about how you fellows feel about "son-of-a-bitch". Well, gentlemen of the jury, the way you feel or what you would do about language of that sort is not a question in this case at all and you should not even consider a statement like that in argument in deciding what the truth about this case is.

It was said in argument also that the State of Georgia should try these men and not the National Government. Well, gentlemen of the jury, that is a law question which counsel really have no right to argue to this jury at all. I did not stop him but I want to tell you that the State of Georgia has power, the only power on earth, to try these defendants; if it cared to, for some offenses but not for this one. This Court has no jurisdiction to try a murder case. These defendants here are not being tried for murder, not at all.

Another thing that was said to this jury was that Robert Hall was a bad man and had a pistol and that the sheriff and officers said they were going to break up carrying pistols by the negroes around. Well, the sheriff should break up, not only illegal carrying of pistols, but break up any other violation of state laws but he is charged here with committing an offense against the United States because he did not follow what the State of Georgia provides that he shall do in enforcing the laws. So, whether Robert Hall was a bad man, it is all right for it to be in evidence, it is all right for it to be in evidence that he had a pistol and had a shotgun, all of that is in evidence, but whether he was a bad man or not and whether he actually violated the laws of the State of Georgia or not is not the question in this case at all. If he violated the laws of the State of Georgia in Baker County, it would be the duty of the Sheriff to proceed as the state law provides for the

prosecution of such offenses, but the state law does not provide that he shall proceed contrary to the Constitution of the United States and without due process of law. That is what he is charged with here.

Another thing was said, gentlemen of the jury, that you should back up the officers. Well, that depends on how you construe that question. All good citizens have a duty to back up all law enforcement officers who proceed according to the law and do no violence to the law themselves; but if it should be true that officers of the law themselves commit criminal offenses, then it is not the duty of good citizens and it is not the duty of a jury to back them up, regardless of whether you think they are guilty or not guilty. That is not true.

The Constitution, in providing for the protection of these rights which I have stated, applies equally to the lowliest citizen of the United States as to the highest. It protects equally the rights of every citizen in the United States and it provides that the state through its officers or the illegal acts of its officers cannot impose punishments and penalties without due process of law, or subject an inhabitant of the state to different punishments or penalties on account of his being an alien or by reason of his color or race, than are prescribed for the punishment of citizens.

So, it is not a question, gentlemen of the jury—and I want to make this clear to you—it is not a question of race prejudice. It is not a question of finding a verdict in a Court of law according to your view or my view of any race question. That is not in the case at all. The constitution and the statute provide how to proceed with the enforcement of state laws and the constitution of the United States prohibits the State of Georgia through any illegal acts of its officers from denying any citizen or imposing any punishment, that would not be imposed on any other citizen, on any inhabitant because of his race or color. So, there is no room under the constitution or

under the statute itself for anybody to work into the trial of a criminal case of this sort a question of race prejudice, that is to say, to the extent that the jury should find a verdict different from what the evidence shows on account of these considerations which I have mentioned. That would not be proper.

Counsel said too that three years, the maximum punishment which could be imposed in this case, was not so important but that your verdict would be tremendously important to the whole country, the United States of America, and that your verdict would be sent all over the United States by wire. Well, would the truth about this case be affected one way or the other whether your verdict was sent all over the United States or whether it was concealed right here in this room? The truth about the thing is actually the only thing that you are to find and you are not to be interested or concerned with what effect it might have on other sections of the country.

Something was said in argument too about if you should find these defendants guilty, you might go home and tell your wives and daughters that they do not have any protection any more. Well, I charge you, gentlemen of the jury, that there is all the protection under state laws that the state laws provide and that when officers of the state follow the state law and enforce it to the limit, there is no conflict with this statute under which this indictment is drawn and they have full authority, as full as they ever had, regardless of what your verdict might be in this case, to enforce legally all of the laws of the State of Georgia.

I charge you, gentlemen of the jury, with reference to the warrant and the docket entries, about which you heard a great deal, that so far as the offense itself is concerned, it is not necessary for the government to show that the warrant was a valid warrant. It is not a necessary element of the offense for the government to show that the

sheriff either did or did not write the warrant, or whether the Justice of the Peace signed it or did not. It is not a necessary element of the offense to show that there was a warrant at all. It is not any necessary element of the offense itself to prove that the sheriff made entries in the Justice of Peace's docket. Those matters are in evidence for whatever you think they are worth in determining whether you think these defendants by their conduct alleged in this indictment did deprive Robert Hall of due process of law, whether they did to him things which the Constitution of the United States says they can't do legally, and that would not depend on whether the sheriff made entries in the docket or whether he wrote the warrant or whether there was any warrant. You may consider all of that evidence in determining whether you think the sheriff is guilty or not but, if you think the case is otherwise made out, then you would be authorized to convict the sheriff, even though you might think that he did not write the warrant and that he did not make any entries in the docket at all.

Now, gentlemen of the jury, I charge you that an officer, like the sheriff or any arresting officer, has certain rights and only certain rights in connection with a prisoner in his custody under arrest. I am going to read you two statements from the Supreme Court, of this state, the Georgia Supreme Court, about what sheriffs can do legally. In this case it says—and this is the Supreme Court of Georgia—"There was no error in charging that an officer cannot suffer himself to be overcome by any opprobrious words or abusive language while he is acting as a minister of the law. He cannot chastise his prisoner for insolence, that is to say, for being uppity. He cannot yield to his passion and take the administration of punishment into his own hands, but can only use such force as is necessary to make the arrest effectual."

In another case, the Court of Appeals this is instead of the Supreme Court, said—this is the Georgia Court of Appeals: "The act of an arresting officer in holding in custody a person whom he has arrested for violation of the law is an act done by virtue of his office. It is the duty of an arresting officer, who has a person under arrest for a violation of law, to refrain from unlawfully assaulting or killing the prisoner."

So, under the holdings of our own appellate Courts, I charge you that legally a sheriff or other officers would have no right to assault and beat or kill a prisoner, no matter what the prisoner said. That is what the Supreme Court of Georgia says, that the sheriff acting as a minister of the law who arrests a man and has him in his custody cannot strike him or beat him or kill him legally, no matter what the prisoner says.

So, if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law, as stated by this statute, and would be depriving the prisoner of certain constitutional rights guaranteed to him by the Constitution of the United States and consented to by the State of Georgia.

I charge you, in that connection, that an arresting officer does have the right to use such force as is necessary in order to make the arrest, if he has a legal process under which to make the arrest. A sheriff who has legal process to make an arrest, has a warrant, has a right to make that arrest and he has a right to use such force, but only such force, as is necessary in order to make the arrest and over and above that he has no right to impose any sort of punishment on his prisoner.

I charge you that the sheriff or other officer, if he had a prisoner under legal arrest and it became necessary in order to prevent the prisoner from killing the sheriff or

other officer or doing him serious bodily harm, would have a right to use such force as was necessary to prevent it. That is all the right that arresting officers have in connection with imposing punishment on a prisoner.

Now, gentlemen of the jury, if you think from the evidence here that the government has proved that these defendants are guilty on counts 2 and 3, the form of your verdict would be, "We the jury find the defendants guilty on counts 2 and 3." If you should find them all not guilty on either count, then the form of your verdict would be, "We the jury find the defendants not guilty." That would mean all of them and it would mean not guilty on either offense.

Now, if you should find the defendants guilty on one of these counts and not guilty on the other, then you would say, "We the jury find the defendants guilty on ~~one~~ count, either two or three, whichever it might be, and not guilty on the other count." If you should find some of the defendants guilty and some of them not guilty, you would also make that clear in your verdict.

I will see counsel in the office a minute.

(In Court's Chambers.)

Mr. Hager:

Judge, I do not see but one thing that I would suggest in the charge. I do not believe you gave the officers as much protection as you would a private citizen and they are certainly entitled to that anyway. Now, a fellow that has a gun and he puts me in fear of my life or grave bodily injury, I have got a right to kill him.

The Court:

Well, it would only be true if you thought it was necessary to kill him to save your life.

Mr. Hager:

Yes, sir, that is true, but I think that is in this case here. He had wrested, according to the testimony, the gun away from one of the officers and the gun did go off in the struggle, and they had a right to use whatever force was necessary to wrest the gun from him, and if they thought, reasonably thought, that they were in danger of their lives or grave bodily harm, they would have a right to kill him.

The Court:

Yes, they would have a right to use enough force to prevent it.

Mr. Hager:

Yes, sir.

The Court:

I think the only thing I left out of that was to say if the jury under circumstances which they think existed believed or could reasonably come to that conclusion, that it was necessary to do what they did in order to protect themselves—

Mr. Hager:

Yes, sir, I think that would be all right. The only thing, as I see, that you left out of it was I do not believe you gave as much protection to the officers as if they were just acting as individuals and I think what you have in mind would cover it.

Mr. Hager:

Now, Your Honor, there is one other thing I would like for you to charge and that is that the indictment itself is merely a charge and has no evidentiary value.

The Court:
All right.

(Returning to Court-Room.)

Gentlemen of the jury, I state to you now that the charges, the allegations, made in this indictment, which you will have out with you, are not themselves evidence. They simply constitute what the government alleges to be the truth about the matter but they are not evidence of the fact. I charge you also that the plea of not guilty entered on this indictment by the defendants is not evidence. It is the contention of the defendants which in effect says that what the indictment charges is not true. That makes an issue for the jury to try and you are to find out the truth about it from the evidence, oral and documentary evidence, which has been introduced in the trial, but you will not consider the indictment or the plea of not guilty as proving anything at all.

I said to you, gentlemen of the jury, that if an officer has a prisoner under arrest and it becomes necessary, in order to prevent the killing of the officer by the prisoner or the inflicting of serious bodily harm upon him, that the officer would have a right to use such force as would be necessary to prevent the injury or the killing to himself, but only that much force and no more. I charge you in that connection that in this case you will determine from the evidence what the situation was around the well during that occurrence that you have heard about, what things have been proved, in your opinion. Get what the exact situation actually was and if from that situation as you find it to be, you think that the officers could reasonably conclude under those circumstances that it was necessary to do what they did do to prevent injury or death to themselves, then they would have a right to

do it but they would have the right only to do what they thought under the circumstances was absolutely necessary in order to prevent injury or death to themselves.

After argument of counsel for both Government and defendants and after charge of the Court, the jury retired and after deliberating upon the issues, returned a verdict against the defendants on counts II and III of the indictment. Said verdict was returned on the 7th day of October 1943.

Immediately thereafter and on October 7, 1943 (the same day the verdict was returned) the Court imposed sentence upon defendants by sentencing each of them to serve one year on count II of the indictment and to pay a fine of \$1000.00 and sentenced each defendant to serve two years on count III of the indictment to run consecutively with the sentence imposed on the second count, making a total term of imprisonment of three years for each defendant and a fine of \$1000.00 as to each.

Wherefore, appellants pray that this their bill of exceptions be certified and approved as correct and that the same be transmitted to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, as provided by law.

This the 4th day of November, 1943.

CLINT W. HAGER,

J. F. KEMP,

ROBT. B. SHORT,

Attorneys for Appellants.

To the Honorable T. Hoyt Davis, United States Attorney
for the Middle District of Georgia:

You are hereby notified that pursuant to the rules governing appeals in criminal cases in the United States

Courts, that M. Claud Screws, Frank Edward Jones, and Jim Bob Kelley (appellants herein) have this day filed in the office of the Clerk of the District Court of the United States for the Middle District of Georgia, Albany Division, their bill of exceptions and assignments of error therein.

This the 4th day of November, 1943.

CLINT W. HAGER,
J. F. KEMP,
ROBT. B. SHORT,
Attorneys for Appellants.

226 ACKNOWLEDGMENT OF SERVICE.

Service of the bill of exceptions in the above entitled case is hereby acknowledged. Copy received.

This the 4th day of November, 1943.

T. HOYT DAVIS,
United States Attorney.

ORDER APPROVING BILL OF EXCEPTIONS.

The above and foregoing bill of exceptions is hereby approved and certified as correct.

I do further certify that said bill of exceptions contains all of the evidence material to the issues adduced upon the trial.

This the 4th day of November, 1943.

BASCOM S. DEEVER,
United States Judge.

Agreed to, this the 4th day of November, 1943.

T. HOYT DAVIS,
United States Attorney.

ASSIGNMENTS OF ERROR.

(Title Omitted.)

Now come the defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as appellants and within the time required by law and the rules of this Court governing appeals in criminal cases and simultaneously with the filing of their bill of exceptions hereby respectfully make and file this their assignments of error, and for assignment say:

1.

That the Court erred in overruling the demurrers filed to both counts of the indictment upon all the grounds set forth in said demurrers and for all the reasons assigned therein. (R.)

2.

That the Court erred in overruling the motion made by appellants at the conclusion of all the evidence for a directed verdict as to each defendant upon both counts of the indictment, upon each and every ground set forth in said motion and for all the reasons assigned in the various grounds of said motion for directed verdict. (R.)

Wherefore, said appellants have appealed to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit and pray that this their assignments of error be considered and sustained, and that the judgment of conviction be reversed by said Court.

Dated: This the 4th day of November, 1943.

CLINT W. HAGER,

J. F. KEMP,

ROBT. B. SHORT,

Attorneys for Appellants.

Filed: November 4, 1943.

DESIGNATION OF RECORD

(Title Omitted.)

To the Clerk of said Court:

We hereby designate the following papers and documents which we request be duly authenticated and sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit to be considered in the appeal of said defendants, said documents are designated as follows:

1. The indictment.
2. Plea and verdict.
3. Sentence of the Court.
4. Demurrer to the indictment.
5. Order sustaining demurrer to count I and overruling it as to counts II and III.
6. Notice of appeal and grounds thereof.
7. Bill of exceptions together with acknowledgment of service of the same.
8. Order approving bill of exceptions.
9. Cost bonds.
10. Assignments of error.
11. This designation of record.
12. Clerk's certificate.

CLINT W. HAGER,
J. F. KEMP,
ROBT. B. SHORT,

Attorneys for Appellants.

Filed: November 4, 1943.

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CLERK'S CERTIFICATE.

In the District Court of the United States for the Middle
District of Georgia—Albany Division.

M. Claud Screws; Frank Edward Jones; Jim Bob Kelley,
Appellants,

vs.

No. 1300, Criminal.

United States of America, Appellee.

United States, of America,
Middle District of Georgia.

I, GEORGE F. WHITE, Clerk of the District Court of the United States in and for the Middle District of Georgia, do hereby certify that the foregoing and attached 229 pages contain a true, full, complete and correct copy of the original record, assignments of error, and all proceedings had in the matter of M. Claud Screws, Frank, Edward Jones and Jim Bob Kelley, Appellants, vs. United States of America, Appellee, as specified in the designation of contents of record on appeal of counsel herein and as the same remains of record and on file in the Clerk's Office of the said District Court at Albany, Georgia.

In Witness Whereof, I have hereunto set my hand and the official seal of the said District Court at Macon, Georgia, this 12th day of November, 1943.

GEORGE F. WHITE,

(George F. White)

(Seal)

Clerk, United States District
Court, Middle District of
Georgia.

[fol. 217] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of December 15, 1943

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY
versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by J. F. Kemp, Esq., for appellants, and T. Hoyt Davis, Esq., United States Attorney, for appellee, was submitted to the Court.

[fol. 218] OPINION OF THE COURT AND DISSENTING OPINION
OF SIBLEY, CIRCUIT JUDGE—Filed January 14, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM BOB
KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Middle District of Georgia

(January 14, 1944)

Before SIBLEY, HOLMES, and WALLER, Circuit Judges

WALLER, Circuit Judge:

Appellants were indicted, tried, and convicted, for an alleged violation of Sec. 20 of the Criminal Code, being

Sec. 52, of Title 18, U. S. C., and for a conspiracy to violate said Sec. 52, of Title 18. It was alleged that the Appellant Screws, while Sheriff of Baker County, Georgia, [fol. 219] and Appellant Jones, while acting as a policeman of the City of Newton, in Baker County, Georgia, both aided and abetted by Appellant Kelley, did under color of the law of Georgia arrest or cause one Robert Hall, a negro citizen of the United States and of the State of Georgia, to be arrested, and brought into the Court House yard of Baker County, where said Robert Hall was beaten over the head with a blackjack by Defendants, from which the death of the said Robert Hall resulted. The substantive offense, alleged in Count 2, was that the Appellants were acting under color of the law of the State of Georgia and deprived the said Robert Hall of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States; among other things the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of life and liberty without due process of law; the right and privilege not to be deprived of the equal protection of the law; the right to be tried, upon the charge upon which he was arrested, by due process of law; and the right and privilege not to be subjected to different punishments, by reason of his race and color, than are prescribed for the punishment of other citizens.

Appellants challenged by demurrer the jurisdiction of the Court below, asserting that in the killing of Hall and the doing of the other acts charged in the indictment they did not violate Section 52 of Title 18 because the rights, privileges, and immunities enumerated in the indictment are "fundamental or natural rights" which do not have their origin in the Constitution and laws of the United States; that these natural and inalienable rights find their source in the sovereignty of the States, whose duty it is to secure and protect these rights, and that the beating and killing of Hall deprived him of rights afforded by [fol. 220] the State rather than by the Constitution and laws of the United States; secondly, it was asserted, that the 14th Amendment to the Constitution was a prohibition against deprivation by the State of the life, liberty, or property of any person without due process of law; or against the deprivation by the State of the equal protection

of the law to any person within its jurisdiction, and that the prohibition of the 14th Amendment were not applicable to the individual or personal acts of a citizen; and, thirdly, that Section 52 could not be applied to situations where a sheriff or other State officer was acting contrary to and against the positive prohibition of State law.

The third count in the indictment charged a conspiracy to commit the offense charged in the second count.

Does Sec. 52, Title 18, U. S. C., confer jurisdiction upon the Federal Court to try a Sheriff, a policeman, and another (who aided and abetted the two officers), for unlawfully beating to death one under arrest and in custody of such officers, on the theory that such beating and consequent death was done under color of State law and was a willful deprivation of rights, privileges, and immunities secured or protected to the deceased by the Constitution and laws of the United States?

The pertinent part of the 14th Amendment to the Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the 14th Amendment provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article", pursuant to which, and in order to implement [fol. 221] the 14th Amendment, Congress enacted what has now come to be Sec. 52 of Title 18, U. S. C., which is as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both."

Sec. 88, Title 18, U. S. C., provides in substantial part that if "two or more persons conspire . . . to commit

any offense against the United States, . . . and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both".

The lower Court properly overruled the demurrer to the second and third counts of the indictment upon which the Defendants were tried and convicted.

The right to the enjoyment of life and liberty is a fundamental or natural right, and is not derived from nor created by the Federal Constitution.¹ Nevertheless, the 14th Amendment was designed to safeguard and protect the individual against the deprivation without due process of law of those rights by the State rather than to create new rights in the individual. Sec. 52 of Title 18 does not merely undertake [fol. 222] to protect rights which are derived from the Federal Constitution but it undertakes to protect and make secure any rights secured or protected by the Federal Constitution and laws, and to that end makes criminal the wrongful deprivation of any rights that are secured or *protected* by the Constitution or laws of the United States. Clearly the right to be secure in one's person and to be immune from illegal arrest and battery, or the right not to be deprived of life or liberty without due process of law, and the right to enjoy the equal protection of the laws, are rights "secured or protected" by the Constitution of the United States, and this ground of the demurrer was not tenable.

The second ground of the demurrer, to the effect that the 14th Amendment was a prohibition against the deprivation by the State of the constitutional rights covered thereby, and that the prohibitions of the 14th Amendment are not applicable to individual or personal acts of the citizen, has as its base a fundamentally correct concept.² However, Sec. 52 of Title 18, and the indictment drawn thereunder, are not intended to cover personal and individual acts of a citizen in wrongfully depriving another citizen of constitutional rights.³ The section would

¹ United States vs. Cruickshank, 92 U. S. 553.

² United States vs. Classic, 313 U. S. 299; Virginia vs. Rives, 100 U. S. 313; Hodges vs. United States, 203 U. S. 1.

³ C. B. & Q. R. R. vs. City of Chicago, 166 U. S. 226; Huntington vs. City of New York, 118 Fed. 683.

have no applicability to a citizen who acts without any color of law, statute, ordinance, regulation, or custom of the State, or not in the name or by the authority of the State. The Act can only be applicable to one who acts under guise of authority of the State and thus brings about the illegal deprivation of constitutional rights. The statute was not designed to reach and cannot be stretched to reach the personal, individual act of one citizen toward another when same is not done under color of State law, [fol. 223] even though the depriving actor were the holder of public office.

In the present case the Sheriff contended both before and during the trial that he was acting pursuant to a warrant issued commanding him to arrest and take into custody Robert Hall for the alleged theft of a tire. A warrant can issue and be served only under color, or authority, of law. A void warrant, in the hands of the Sheriff or his deputy, is color of authority, and acts done in the execution of such a warrant are done under color of law. The deprivation of the constitutional rights of one citizen by another is not a violation of Section 52 and becomes a violation only when the depriving citizen is acting under color of law, as distinguished from acting within the law.¹ A sheriff who, acting under a valid warrant in making a necessary and lawful arrest and who in self-defense slays the person he seeks to arrest, has not violated the section, but if a sheriff were acting only under a pretext or color of law and in so doing unlawfully caused the death of another, such sheriff would be amenable to the section in question. The deprivation of liberty or property or life under valid State law constitutes no offense under the Act, but it is a deprivation of a constitutional right under a mere pretense or color of law by one pretending to act under the authority of the State that calls the section into operation. In the instant case there is evidence to the effect that the alleged warrant of arrest was prepared by the Sheriff and was a spurious

¹ "Color of law" does not mean actual law. "Color" as a modifier, in legal parlance, means "appearance as distinguished from reality". Color of law means "mere semblance of legal right". McCann vs. Des Moines, 174 U. S. 168 (text 175).

afterthought. Be that as it may, he insisted that he was acting under color of authority in making the arrest. Assuming that the Sheriff was possessed of a valid warrant, although there was evidence in the case to the contrary, [fol. 224] the beating of a prisoner to death is not necessarily an incident to the making of a lawful arrest. The wrongful beating of a prisoner by an arresting officer acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects, and which Sec. 52 makes a criminal offense, the constitutionality of which section is not raised.

The jury has found, under the overwhelming weight of the testimony, that the beating of the said Robert Hall to his death by the Defendants was without justification and not in necessary self-defense and not in the exercise of such force as was reasonably necessary to make a lawful arrest or to repel an assault.

The third contention of Appellants is that the section in question does not embrace the personal, unofficial, and individual acts of one who holds an office unless those acts were perpetrated under the guise or authority of State law. It may be conceded that if the Sheriff gets into an altercation in a matter that is strictly personal, and which has no connection with his official functions or duties and which arises out of no claim or effort or color of the exercise of lawful authority, the statute would not apply. Certainly the State is not to be held responsible for the unofficial and wholly personal acts of an individual who merely happens to be Sheriff. If John Smith, who happens to be Sheriff, is the owner of a house which he rents to Bill Johnson, and he and Bill Johnson get into a fight over the failure of Johnson to pay rent to Smith, and in the fight Johnson is subjected to the loss of his life, such act would not call the Federal statute into operation. It is essential that the act of deprivation not only be unlawful, but that it be committed under color or pretense of law.

[fol. 225] The 14th Amendment renders State statutes unconstitutional which deny equal protection of the law, due process of the law, etc., but Sec. 52 makes punishable acts done by one under color or pretense of law which result in the deprivation of rights protected by the Federal Constitution.

The motion for directed verdict was based upon substantially the same grounds as were the demurrers, viz, the jurisdiction of the Court. We are of the opinion that the Court below had jurisdiction, that the evidence overwhelmingly supports the verdict of the jury, and that the judgment of the lower Court should be affirmed.

Affirmed.

SIBNEY, Circuit Judge, Dissenting:

Horror at what happened in this case has, I think, interfered with a calm consideration of the law involved. Certainly, if the evidence for the prosecution is credited, the appellants ought to be in the penitentiary. The question is, ought they to be in a penitentiary of the United States?

Death resulted from the beating of a prisoner on the head with a club. The prisoner's loaded shotgun was at hand, and one officer had a pistol. No one attempted to shoot the prisoner. When he appeared to be in a bad condition he was taken at once by the sheriff into another county to a hospital. I do not think it was a wilful murder, but rather that it was involuntary manslaughter in the commission of an unlawful act. The indictment does not charge an intentional killing, and no such issue was submitted to the jury.

[fol. 226] What does the indictment charge? Count 2 is the key count, being merely repeated in Count 3 as a conspiracy. In it there is an elaborate list of rights and immunities alleged to be secured and protected by the Fourteenth Amendment of the Constitution, but these are allegations of law. It is alleged that the defendants acted under color of the law of Georgia and the City of Newton, but no special act of the Legislature or ordinance of the town is mentioned. The fact allegations are these: Serews, being State Sheriff, and Jones, being a city police officer, wilfully deprived Hall of his rights under the Fourteenth Amendment, "that is to say, the defendants arrested and caused to be arrested said Hall . . . and then and there unlawfully and wrongfully did assault, strike and beat said Hall about the head with human fists and a blackjack, causing injuries which were the proximate and immediate cause of his death". The arrest is not alleged to be un-

lawful, but only the beating. Do these facts make a crime against the United States? The affirmative answer is sought in Section 20 of the Criminal Code, the applicable words being: "Whoever under color of any law, statute, ordinance, regulation or custom, wilfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges and immunities secured or protected by the Constitution and laws of the United States . . . shall be fined . . . or imprisoned . . . or both."

Who is protected? Any inhabitant of any part of the United States territory.

Who is punishable? Whoever acts under color of any law or custom. The statute does not mention State laws, or State customs, or State officers, but applies equally to federal or territorial laws and customs and officers; and indeed to all persons acting by virtue of any supposed [fol. 227] law or custom, whether valid or invalid. The statute does not mention the Fourteenth Amendment and does not profess to be "appropriate legislation" to enforce it. It takes hold of every person in the United States and makes him a potential criminal if he acts under color of any law or custom.

What does it forbid? Wilful deprivation of any right secured or protected by the Constitution and laws of the United States. Wilful, I take it, means intentional, not by accident or misfortune. Does it mean that a particular clause of the Constitution was in mind, with a definite intention to violate it? In this case, there is no reason to suppose that Screws and Jones once thought of the Fourteenth Amendment, or that they knew much or anything about it. The jury were not instructed to make any such enquiry. The accused intentionally beat Hall, and the jury were told that was enough, if not justified.

Now it is a common form of legislation to say that a violation of any provision of a particular Act shall be a crime. The citizen has everything before his eyes and can readily know what he may not do. Far more serious would it be to attempt to make criminal "every deprivation of rights secured" even by one elaborate Act, say the Interstate Commerce Act, or the National Labor Relations Act. If this statute had confined itself to punishing State officers for helping a State to deprive any person of life,

liberty or property without due process of law, contrary to the Fourteenth Amendment, which is the function here assigned to it, it seems to me it would have been too vague to make a good criminal statute, for not even the judges on the bench know just what that portion of the Fourteenth Amendment means, and ideas about it have changed very greatly since Section 20 was first enacted. What it does is to gather up every provision of the federal Constitution [fol. 228] and every provision of every federal statute which may secure or protect any sort of personal, civil, property or political right, and declare it to be a crime to deprive anyone of his right. Who can enumerate what rights are secured by the Bill of Rights of the Federal Constitution? Or by the prohibitions against State action in the original Constitution, or the Thirteenth, Fourteenth and other Amendments? Or in such laws of the United States as the Interstate Commerce Act, the National Labor Relations Law, the Railway Labor Act, Federal Employers Liability Act, War Risk Insurance Act, Harbor Workers Act, Seamen's Acts, Fair Labor Standards Act, and fifty others? It seems to me that such wholesale criminal legislation is not constitutionally possible, because there is in it no ascertainable standard of guilt, and the right to be precisely informed of the things to be charged as crimes is not practically preserved. *United States vs. L. Cohen Grocery Co.*, 255 U. S. 81.

The statutory words, taken in their full sweep, would involve startling consequences. Judges and prosecuting officers, State and federal, tread on dangerous ground. An intentional refusal to send for witnesses, to furnish counsel, to grant a prompt trial, or a full indictment, may make them criminals. Many Federal Boards have made many "regulations", some of which no doubt are contrary to rights secured by the federal laws. Those who act under color of such regulations are liable to prosecution. Every State Sheriff or United States Marshal who uses force on a prisoner, every prison warden who disciplines, is liable to have to answer a federal indictment, as to whether his act was lawful, or only under color of law. A warden censors a prisoner's mail; does he deny his rights under the postal laws? A law of Georgia permits a landowner to impound trespassing cattle till damages are paid. If under color of this law one impounds cattle

[fol. 229] and then kills and eats them unlawfully, he is of course a criminal under State law, but as he has, under color of a law, taken property without due process of law he also must suffer federal imprisonment. In this very case Jones and Screws had, a few days before, apparently without due process, taken Hall's pistol. They might have been federally indicted for that. When Hall was arrested his shotgun was taken from his home, not in a search of his person, but apparently without lawful warrant. This was federally indictable. Policemen everywhere arrest without warrant unlawfully. They are all guilty of wilfully depriving the prisoner of liberty without due process of law, and indictable under this statute, taken at its face value.

But it is said the present is a clear case of deprivation of rights, and a serious one because life was taken, even if not wilfully taken. Who is to decide whether the right is a clear one, or how serious the deprivation must be? The judge and jury? Thus construed, the statute falls squarely under the decision in the *Cohen Grocery* case, *supra*.

The only reasonable construction of the statute which it seems to me could be upheld is that where one, knowing a law or regulation or custom is contrary to a right secured by the federal Constitution or laws, wilfully undertakes to enforce the law or regulation or custom, he shall be punished. There is here no law or regulation or custom to beat a prisoner, white or black. It is lawful to subdue one, if he resists or attacks the arresting officer. That law is not contrary to any right federally secured. It is also a custom in Georgia to strike one who calls you to your face a "son of a bitch", but as the district judge charged the jury in this case the privilege of resenting such words does not extend to an arresting officer. There [fol. 230] is not shown here by allegation or evidence or judicial notice any law, regulation or custom under color of which Screws and Jones struck Hall unless, as they claimed, to subdue him, which would not have deprived him of any right. If they simply struck him unlawfully, as alleged, they are liable on their official bonds, they are liable in damages for assault and battery, and they are liable to criminal prosecution under Georgia law, and because of

the fatal consequence, the prosecution may be for involuntary manslaughter or perhaps murder. I do not think Section 20, if sustainable at all, can be applied to the case.

[fol. 231]

JUDGMENT

Extract from the Minutes of January 14, 1944

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Sibley, Circuit Judge, dissents."

[fols. 232-234½] PETITION FOR REHEARING--Filed February 2, 1944

**IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

M. CLAUD SCREWS,
FRANK EDWARD JONES, and
JIM BOB KELLEY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 10834

CRIMINAL CASE

MOTION FOR REHEARING

Now come the appellants named above in the caption, and within the time provided by law, and before the remittitur from this court has been sent down, and move the court for a rehearing upon the following grounds, to wit:

GROUND 1.

Because the court has overlooked or ignored sound and controlling principles of law as announced in the decision of the Supreme Court of the United States in the case of:

Joseph E. Snowden v. Edward J. Hughes, et al
which was decided January 17, 1944, same being No. 57, October Term, 1943, which decision holds that,

"A construction of the equal protection clause which would find a violation of a federal right in every departure by state officers from state law is not to be favored."

And which further holds that,

"Mere violation of a state statute does not infringe the federal Constitution."

And wherein (in concurring opinion) Mr. Justice Frankfurter said:

"It is not to be resolved by abstract considerations such as the fact that every official who purports to wield power conferred by a state is **pro tanto** the state. Otherwise every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court."

GROUND 2.

Because the court has overlooked or ignored sound principles of law in holding that the act of a state arresting officer, contrary to state law, amounts to state action.

GROUND 3.

Because the court has overlooked or ignored sound principles of law in holding that a District Court of the United States has original jurisdiction to try a state arresting officer who takes the life of his prisoner, in a way and manner which is contrary to state law.

GROUND 4.

Because the court has overlooked or ignored sound principles of law in holding that a state officer acts under "color of law" merely because he is acting by virtue of his office, even though he is not authorized by law to commit said act and even though he acts contrary to law.

GROUND 5.

Because the court has overlooked or ignored sound principles of law in holding that, "The wrongful beating of a prisoner by an arresting officer acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects, and which Sec. 52 makes a criminal offense."

GROUND 6.

Because the court has overlooked or ignored sound principles of law in holding that where a state arresting officer unlawfully strikes his prisoner, that he commits an offense under Sec. 52 of Title 18, U. S. C.

IN CONCLUSION, we respectfully submit that the court erred in its opinion and decision and that a rehearing should be granted.

Respectfully submitted,

CLINT W. HAGER
J. F. KEMP
ROBERT B. SHORT,

Attorneys for Appellants.

GEORGIA, FULTON COUNTY.

We, Clint W. Hager and J. F. Kemp, do certify that we are of counsel for the appellants named in the within and foregoing motion and do hereby certify that we have read the within and foregoing motion for a rehearing and believe that the court has overlooked certain well established principles of law which, if considered, would require a different decision from that rendered by the court and we further certify that this motion is made in good faith and not for the purpose of delay.

This the 31 day of January, 1944.

CLINT W. HAGER

J. F. KEMP

[fol. 235] OPINION ON REHEARING—Filed February 18, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Middle District of Georgia

On Petition for Rehearing

(February 18, 1944)

Before Sibley, Holmes, and Waller, Circuit Judges

By the Court: The petition for rehearing in the above
styled cause is hereby denied.

Sibley, Circuit Judge, favors a rehearing.

[fol. 236] WALLER, Circuit Judge, specially concurring:

It is my view that Section 52 of Title 18, U. S. C., is
an anti-discrimination statute, under which it must be
alleged and shown that the deprivation of federal right
was on account of the alienage, race or color of the de-
privee, but the contrary was held in *United States v.*
Classic, 313 U. S. 299, which holding I, unapprovingly,
must follow. In the present state of the law, as con-
strued by the Supreme Court, the petition for rehearing
is properly denied. The recent decision in *Snowden v.*
Hughes, decided Jan. 17, 1944, by that court, is not in
conflict with the views expressed by this court in the for-
mer opinion in this case.

[fol. 237]

ORDER DENYING REHEARING

Extract from the Minutes of February 18, 1944

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, favors a rehearing."

"Waller, Circuit Judge, specially concurs."

[fol. 238] MOTION AND ORDER STAYING MANDATE—Filed
February 23, 1944

IN THE UNITED STATES, CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM
BOB KELLEY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Now come M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, appellants in the above entitled case and by and through their attorneys at law, Clint W. Hager, J. F. Kemp and Robert B. Short, show to this Honorable Court the following facts:

1

That appellants were indicted by a Grand Jury of the United States, impaneled and sworn in the Middle District of Georgia at the October Term A. D. 1942, of said court.

That appellants were put on trial in the Albany Division of the Middle District of Georgia, on the 4th day of October 1943, and on October 7, 1943 the appellants were found guilty by the jury which tried them.

That appellants prosecuted their appeal to this Honorable Court and on the 14th day of January 1944, this court affirmed the judgment of the District Court for the Middle District of Georgia.

That within the time provided by law appellants filed their motion for a rehearing and on the 18th day of February 1944 this Honorable Court entered an order denying [fol. 239] said petition for a rehearing.

Appellants now desire to file a petition to the Supreme Court of the United States for certiorari to review the judgment of this court and of the court below, for the purpose of having the Supreme Court pass upon the questions of law raised by appellants upon the hearing of the court below and in this court.

That the mandate of this Honorable Court in the above entitled cause, will be sent down to the District Court of the United States for the Middle District of Georgia on the 28th day of February, 1944, unless the same be stayed by order of this court.

That appellants desire that said mandate be stayed for a period of thirty days from the rendition of the order entered by the court denying the petition for a rehearing, to-wit, from February 18, 1944, in order that they may prepare their application for a writ of certiorari to the Supreme Court of the United States, and to have their said application filed and served within the time provided by statute.

Wherefore, appellants pray that this Honorable Court by proper order, stay the mandate in said case for a period of thirty days from February 18, 1944, as provided by law, in order that appellants may prepare, perfect, file and serve their petition for writ of certiorari to the Supreme Court of the United States.

Clint W. Hager, J. F. Kemp, Robt. B. Short, Attorneys for Appellants.

[fol. 240] I hereby certify that I am one of the attorneys of record for movants in the foregoing motion and that it is the intention of appellants to file a petition to the Supreme Court of the United States for a writ of certiorari.

I further certify that in good faith I believe that there are meritorious and substantial questions of law that should be presented in said petition for certiorari and that said petition for certiorari is to be brought in good faith and not for the purpose of delay.

J. F. Kemp, Attorney for Movants.

[fol. 241] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM
BOB KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

On consideration of the application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days, from February 18, 1944; the stay to continue in force until the final disposition of the case by the Supreme Court provided that within thirty days from February 18, 1944 there shall be filed with the clerk of this court the certificate of the

clerk of the Supreme Court that certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from February 18, 1944, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 23rd day of February, 1944.

(Signed) E. R. Holmes, United States Circuit Judge.

[fol. 242] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 243] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 24, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3294)